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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Document Number AMS–FV–07–0100, FV–11–327]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) has revised the United States Standards for Grades of Frozen Okra. The grade standards for frozen okra have been changed from a ''variables score point'' system to an ''individual attributes'' grading system. The ''dual grade nomenclature'' has been replaced with single letter grade designations and editorial changes were made. These changes bring the United States Standards for Grades of Frozen Okra in line with the present quality levels being marketed today and provide guidance in the effective utilization of frozen okra.

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

FOR FURTHER INFORMATION CONTACT: Brian E. Griffin, Inspection and Standardization Branch, Processed Products Division, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; fax: (202) 690–1527; or Internet: *http://www.regulations.gov.* The United States Standards for Grades of Frozen Okra are available through the address cited above and on the AMS Web site at *http://www.ams.usda.gov/AMSv1.0/processedinspection.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official grade standards available upon request. Those voluntary United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations, 7 CFR part 52, but are maintained by USDA, AMS, Fruit and Vegetable Programs. AMS is revising the U.S. Standards for Grades of Frozen Okra using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS received a petition from the American Frozen Food Institute (AFFI) requesting the revision of the United States Standards for Grades of Frozen Okra. The petitioners represent almost all of the processors of frozen okra in the United States. The grade standards were based on the variable score points grading system.

Prior to undertaking research and other work associated with revising the grade standards, AMS sought public comments on the petition (see 64 FR 52266). A notice requesting additional comments on the proposed revision to the United States Standards for Grades of Frozen Okra was published in the December 12, 2007, **Federal Register** (72 FR 70565). At the request of AFFI, a notice reopening and extending the comment period was published in the May 16, 2008, **Federal Register** (73 FR 28424). A 60 day period was provided for interested persons to submit comments on the proposed grade standards. Several discussion drafts circulated between September 2008 and February 2011. A request for comment on the proposed revised United States Standards for Grades of Frozen Okra was published in the June 2, 2011 **Federal Register** (76 FR 31887). No comments were received in regard to this request.

The revision of the United States Standards for Grades of Frozen Okra provides common language for trade and better reflects the current marketing of frozen okra. The official grade of a lot of frozen okra covered by these grade standards is determined by the procedures set forth in the ''Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).''

Authority: 7 U.S.C. 1621–1627.

Dated: October 4, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–26045 Filed 10–14–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1038; Directorate Identifier 2011–NE–31–AD; Amendment 39–16843; AD 2011–20–51]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PT6A–15AG, –27, –28, –34, –34AG, –34B, and –36 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pratt & Whitney Canada PT6A–15AG, –27, –28, –34, –34AG, –34B, and –36 series turboprop engines. This emergency AD was sent previously to all known U.S. owners and operators of these engines. This AD requires the removal of affected part manufacturer approval (PMA) replacement Timken Alcor Aerospace Technologies, Inc. (TAATI) first stage reduction sun gears and the interacting planet gears, from the propeller reduction gearbox assembly. This AD was prompted by failures of certain PMA replacement first stage reduction sun gears, manufactured by TAATI. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective November 1, 2011 to all persons except those persons to whom it was made immediately

effective by Emergency AD 2011–20–51, issued on September 15, 2011, which contained the requirements of this amendment.

We must receive comments on this AD by December 1, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Paul Craig, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Suite 100, Lakewood, CA 90712; phone: 562–627–5252; fax: 562–627–5210; e-mail: *paul.craig@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On September 15, 2011, we issued Emergency AD 2011–20–51, which requires the removal of affected PMA replacement TAATI first stage reduction sun gears and the interacting planet gears, from the propeller reduction gearbox assembly. This action was prompted by failures of certain replacement PMA first stage reduction sun gears, manufactured by TAATI. This condition, if not corrected, could result in failure of the shaft portion of the sun gear, which will result in an engine in-flight shut down, possible uncontained engine failure, aircraft damage, and serious injuries.

FAA's Determination

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

AD Requirements

This AD requires the removal of affected PMA replacement TAATI first stage reduction sun gear and the interacting planet gears, from the propeller reduction gearbox assembly, within 15 operating hours or 15 days after the effective date of this AD, whichever occurs first.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time required in this AD to remove any affected parts from service. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1038 and Directorate Identifier 2011–NE–31–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that the inspection in this AD will affect about 5,000 engines installed on airplanes of U.S. registry. We also estimate that disassembly of reduction gearboxes will affect about 50 engines, and the sun gear removal will affect about 40 engines. We also estimate that it will take about 1 work-hour per engine for inspecting the engine records. We also estimate that for about 10 engines, it will take about 10 work-hours for the inspection of the sun gear serial number (S/N) and reassembly of the reduction gearbox, due to the records not identifying the S/N. We also estimate that it would take about 16 work-hours for parts replacement. The average labor rate is $85 per work-hour. Required parts for one engine will cost about $14,500. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,067,900.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–20–51 Pratt & Whitney Canada: Amendment 39–16843; Docket No. FAA–2011–1038; Directorate Identifier 2011–NE–31–AD.

(a) Effective Date

This AD is effective November 1, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–20–51, issued on September 15, 2011, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada PT6A–15AG, –27, –28, –34, –34AG, –34B, and –36 series turboprop engines that have had maintenance done to the power section module involving first stage reduction sun gear replacement since February 3, 2010, and having a Timken Alcor Aerospace Technologies, Inc. (TAATI) part manufacturer approval (PMA) replacement first stage reduction sun gear, part number (P/N) E3024765, serial numbers (S/Ns) PC5–091 through PC5–176, installed.

(d) Unsafe Condition

This AD was prompted by failures of certain first stage reduction sun gears, manufactured by TAATI. We are issuing this AD to prevent failure of the shaft portion of the sun gear, which will result in an engine in-flight shut down, possible uncontained engine failure, aircraft damage, and serious injuries.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) For affected engines, remove the PMA replacement TAATI first stage reduction sun gear and the interacting planet gears from the propeller reduction gearbox assembly within 15 operating hours or 15 days after the effective date of this AD, whichever occurs first.

(g) Installation Prohibition

After the effective date of this AD, do not install on any airplane, any engine or power section module with a TAATI PMA replacement first stage reduction sun gear, P/N E3024765, S/Ns PC5–091 through PC5–176.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(i) Related Information

For further information about this AD, contact: Paul Craig, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Suite 100, Lakewood, CA 90712; phone: 562–627–5252; fax: 562–627–5210; e-mail: *paul.;craig@faa.gov.*

Issued in Burlington, Massachusetts, on October 12, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–26840 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0760; Directorate Identifier 2011–NE–10–AD; Amendment 39–16789; AD 2011–18–07]

RIN 2120–AA64

Airworthiness Directives; WYTWORNIA SPRZETU KOMUNIKACYJNEGO (WSK) ''PZL–RZESZOW''—SPOLKA AKCYJNA (SA) PZL–10W Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register.** That AD applies to the products listed above. The effective date in paragraph (a) of the Amended section of the AD is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective October 17, 2011. The effective date of AD 2011–18–07 remains October 4, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* phone: 781–238–7176; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–18–07, Amendment 39–16789 (76 FR 57900, September 19, 2011), currently requires a one time inspection of spline teeth on the fuel metering pump shaft for excessive wear, for WSK PZL–10W series turboshaft engines.

As published, paragraph (a) of the Amended section is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register.**

The effective date of this AD remains October 4, 2011.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of September 19, 2011, on page 57901, in the third column, paragraph (a) of AD 2011–18–07 is corrected to read as follows:

(a) This airworthiness directive (AD) becomes effective October 4, 2011.

Issued in Burlington, Massachusetts, on October 4, 2011.

Peter A. White,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–26274 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2011–1017; Airspace Docket No. 11–ASO–30]

RIN 2120–AA66

Amendment of Time of Designation for Restricted Areas R–5314A, B, C, D, E, F, H, and J; Dare County, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for restricted areas R–5314A, B, C, D, E, F, H, and J in Dare

County, NC, by removing the specific published times on Saturday and Sunday. This change reflects current utilization of the restricted areas and provides increased public access to the area on weekends.

DATES: Effective date 0901 UTC, December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, AJV–11, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Air Force requested the FAA to amend the time of designation for the Dare County Range restricted areas by removing the specific published times on Saturday and Sunday. Military use of the restricted areas on Saturday and Sunday would still be available through issuance of a NOTAM six hours in advance. The change reflects current utilization of the restricted areas and increases the availability of the airspace to the public on weekends.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by reducing the published time of designation of restricted areas R–5314A, B, C, D, E, F, H, and J, Dare County, NC, by removing the words ''0700–1800 local time Saturday–Sunday.'' The restricted areas would continue to be available for weekend use by NOTAM issued six hours in advance.

This change reduces the time of designation for the restricted areas thereby increasing public access to the airspace. Because the amendment does not affect the boundaries, designated altitudes, or activities conducted within the restricted area and lessens the burden on the public, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311c., FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is an administrative change to the descriptions of the affected restricted areas to reduce the time of designation. It does not alter the dimensions, altitudes, or activities conducted within the airspace; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.53 [Amended]

■ 2. Section 73.53 is amended as follows:

■ 1. R–5314A Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 2. R–5314B Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 3. R–5314C Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 4. R–5314D Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 5. R–5314E Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 6. R–5314F Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 7. R–5314H Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

■ 8. R–5314J Dare County, NC [Amended].

By removing the words ''Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance,'' and inserting the words ''Time of designation. 0600–2400 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

Issued in Washington, DC, on October 11, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–26785 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30806; Amdt. No. 3446]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective October 17, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 17, 2011.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on September 30, 2011.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 20 OCT 2011

Albert Lea, MN, Albert Lea Muni, RNAV (GPS) RWY 17, Amdt 2
Albert Lea, MN, Albert Lea Muni, RNAV (GPS) RWY 35, Amdt 1
Albert Lea, MN, Albert Lea Muni, VOR RWY 17, Amdt 1
Albert Lea, MN, Albert Lea Muni, VOR/DME RWY 35, Amdt 1

Effective 17 NOV 2011

Blytheville, AR, Blytheville Muni, NDB RWY 18, Amdt 3, CANCELLED
Blytheville, AR, Blytheville Muni, NDB RWY 36, Amdt 2, CANCELLED
Windsor Locks, CT, Bradley Intl, COPTER ILS OR LOC RWY 6, Amdt 1
Fitzgerald, GA, Fitzgerald Muni, LOC RWY 1, Orig-B, CANCELLED
Iron Mountain Kingsford, MI, Ford, ILS OR LOC RWY 1, Amdt 12A
Lexington, MO, Lexington Muni, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Lexington, MO, Lexington Muni, VOR/DME OR GPS RWY 22, Orig-A, CANCELLED
Gulfport, MS, Gulfport-Biloxi Intl, ILS OR LOC RWY 32, Amdt 4C
Albemarle, NC, Stanly County, Takeoff Minimums and Obstacle DP, Amdt 1
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 5, Amdt 1A
Fulton, NY, Oswego County, VOR RWY 33, Amdt 5A, CANCELLED
Steubenville, OH, Jefferson County Airpark, Takeoff Minimums and Obstacle DP, Amdt 1
Clemson, SC, Oconee County Rgnl, NDB RWY 25, Amdt 1
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 7, Amdt 2
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 25, Amdt 2
Clemson, SC, Oconee County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Conway, SC, Conway-Horry County, NDB RWY 4, Orig-B
Conway, SC, Conway-Horry County, NDB RWY 22, Amdt 1
Conway, SC, Conway-Horry County, RNAV (GPS) RWY 4, Amdt 1
Conway, SC, Conway-Horry County, RNAV (GPS) RWY 22, Amdt 1
Houston, TX, Dan Jones Intl, Takeoff Minimums and Obstacle DP, Orig
Pearsall, TX, Mc Kinley Field, Takeoff Minimums and Obstacle DP, Orig
Weatherford, TX, Parker County, Takeoff Minimums and Obstacle DP, Orig
Beckley, WV, Raleigh County Memorial, Takeoff Minimums and Obstacle DP, Amdt 5

Effective 15 DEC 2011

Anvik, AK, Anvik, NDB RWY 35, Orig, CANCELLED
Osceola, IA, Osceola Muni, Takeoff Minimums and Obstacle DP, Orig
Bloomington/Normal, IL, Central IL Rgnl Arpt at Bloomington-Normal, ILS OR LOC RWY 29, Amdt 10A
Rantoul IL, Rantoul Natl Avn Cntr-Frank Elliott Fld, Takeoff Minimums and Obstacle DP, Amdt 1
Dodge City, KS, Dodge City Rgnl, Takeoff Minimums and Obstacle DP, Orig
Fitchburg, MA, Fitchburg Muni, NDB–A, Amdt 4B
Nantucket, MA, Nantucket Memorial, RNAV (GPS) RWY 33, Orig-B
Easton, MD, Easton/Newnam Field, RNAV (GPS) RWY 22, Amdt 1
Longville, MN, Longville Muni, Takeoff Minimums and Obstacle DP, Orig
McGregor, MN, Isedor Iverson, Takeoff Minimums and Obstacle DP, Orig
Park Rapids, MN, Park Rapids Muni-Konshok Field, Takeoff Minimums and Obstacle DP, Orig
Red Wing, MN, Red Wing Rgnl, RNAV (GPS) RWY 27, Amdt 2B
Malta, MT, Malta, RNAV (GPS) RWY 8, Amdt 1
Malta, MT, Malta, RNAV (GPS) RWY 26, Amdt 1
Malta, MT, Malta, Takeoff Minimums and Obstacle DP, Orig
Miles City, MT, Frank Wiley Field, Takeoff Minimums and Obstacle DP, Orig
Miles City, MT, Frank Wiley Field, VOR RWY 4, Amdt 12
Miles City, MT, Frank Wiley Field, VOR/DME RWY 4, Orig
Plymouth, NC, Plymouth Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Beatrice, NE, Beatrice Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Tonopah, NV, Tonopah, GPS RWY 15, Orig-B, CANCELLED
Tonopah, NV, Tonopah, RNAV (GPS) RWY 15, Orig
Aiken, SC, Aiken Muni, NDB RWY 25, Amdt 10A
Aiken, SC, Aiken Muni, VOR/DME–A, Amdt 1A
Bumpass, VA, Lake Anna, RNAV (GPS) RWY 8, Orig
Bumpass, VA, Lake Anna, RNAV (GPS) RWY 26, Orig
Bumpass, VA, Lake Anna, Takeoff Minimums and Obstacle DP, Orig
Renton, WA, Renton Muni, NDB RWY 16, Amdt 7
Renton, WA, Renton Muni, RNAV (GPS) Y RWY 16, Amdt 4
Renton, WA, Renton Muni, RNAV (GPS) Z RWY 16, Amdt 2
Renton, WA, Renton Muni, Takeoff Minimums and Obstacle DP, Amdt 8
Janesville, WI, Southern Wisconsin Rgnl, ILS OR LOC RWY 32, Amdt 1A
Janesville, WI, Southern Wisconsin Rgnl, VOR RWY 4, Amdt 27, CANCELLED
Janesville, WI, Southern Wisconsin Rgnl, VOR/DME RWY 22, Amdt 1, CANCELLED
Newcastle, WY, Mondell Field, RNAV (GPS) RWY 13, Orig
Newcastle, WY, Mondell Field, RNAV (GPS) RWY 31, Orig

[FR Doc. 2011–26246 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30807; Amdt. No. 3447]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule

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

DATES: This rule is effective October 17, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 17, 2011.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on September 30, 2011.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
20–Oct–11	WI	Milwaukee	Milwaukee/Lawrence J. Timmerman.	1/4410	9/1/11	This NOTAM, published in TL 11–22, is hereby rescinded in its entirety.
17–Nov–11	AZ	Phoenix	Phoenix Sky Harbor Intl.	1/0064	9/23/11	RNAV (RNP) Z RWY 7R, Orig-A

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
17–Nov–11	AZ	Phoenix	Phoenix Sky Harbor Intl.	1/0065	9/23/11	RNAV (RNP) Z RWY 25L, Orig-A
17–Nov–11	AZ	Phoenix	Phoenix Sky Harbor Intl.	1/0066	9/23/11	RNAV (RNP) Z RWY 25R, Orig-A
17–Nov–11	AZ	Phoenix	Phoenix Sky Harbor Intl.	1/0067	9/23/11	RNAV (RNP) Z RWY 7L, Orig-A
17–Nov–11	AZ	Phoenix	Phoenix Sky Harbor Intl.	1/0068	9/23/11	RNAV (RNP) Z RWY 8, Orig-A
17–Nov–11	AZ	Phoenix	Phoenix Sky Harbor Intl.	1/0069	9/23/11	RNAV (RNP) Z RWY 26, Orig-A
17–Nov–11	UT	Brigham City	Brigham City	1/0186	9/23/11	NDB A, Amdt 1
17–Nov–11	UT	Brigham City	Brigham City	1/0188	9/23/11	RNAV (GPS) RWY 35, Amdt 1
17–Nov–11	CA	Palm Springs	Palm Springs Intl	1/0222	9/29/11	RNAV (RNP) Y RWY 13R, Amdt 1A
17–Nov–11	CA	Palm Springs	Palm Springs Intl	1/0223	9/29/11	RNAV (RNP) Z RWY 13R, Orig-A
17–Nov–11	CA	Palm Springs	Palm Springs Intl	1/0224	9/29/11	RNAV (RNP) Y RWY 31L, Amdt 1A
17–Nov–11	CA	Long Beach	Long Beach/Daugherty Field.	1/0227	9/29/11	RNAV (RNP) RWY 25R, Orig-A
17–Nov–11	GQ	Agana	Guam Intl	1/0544	9/29/11	RNAV (RNP) Z RWY 24R, Orig-B
17–Nov–11	GQ	Agana	Guam Intl	1/0545	9/29/11	RNAV (RNP) Z RWY 6L, Orig-C
17–Nov–11	GQ	Agana	Guam Intl	1/0546	9/29/11	RNAV (RNP) Z RWY 6R, Orig-B
17–Nov–11	GQ	Agana	Guam Intl	1/0547	9/29/11	RNAV (RNP) Z RWY 24L, Orig-D
17–Nov–11	NY	Rochester	Greater Rochester Intl	1/0596	9/21/11	RNAV (GPS) RWY 28, Amdt 1A
17–Nov–11	FL	Orlando	Orlando Sanford Intl	1/0753	9/21/11	RNAV (GPS) RWY 18, Orig
17–Nov–11	AL	Cullman	Folsom Field	1/1140	9/21/11	RNAV (GPS) RWY 20, Orig
17–Nov–11	AL	Cullman	Folsom Field	1/1270	9/21/11	RNAV (GPS) RWY 2, Orig
17–Nov–11	GA	Savannah	Savannah/Hilton Head Intl.	1/1431	5/9/11	RNAV (RNP) Y RWY 28, Orig
17–Nov–11	NY	Schenectady	Schenectady County	1/1880	9/29/11	ILS OR LOC RWY 4, Amdt 5
17–Nov–11	NY	Schenectady	Schenectady County	1/1881	9/29/11	RNAV (GPS) RWY 28, Orig
17–Nov–11	NY	Schenectady	Schenectady County	1/1882	9/29/11	RNAV (GPS) RWY 4, Orig
17–Nov–11	NY	Schenectady	Schenectady County	1/1883	9/29/11	RNAV (GPS) RWY 10, Orig
17–Nov–11	SC	Hartsville	Hartsville Rgnl	1/1886	9/23/11	RNAV (GPS) RWY 3, Orig
17–Nov–11	SC	Hartsville	Hartsville Rgnl	1/1891	9/23/11	RNAV (GPS) RWY 21, Orig
17–Nov–11	WI	Milwaukee	Lawrence J. Timmerman.	1/2308	9/30/11	RNAV (GPS) RWY 22R, Orig-A
17–Nov–11	MI	Pellston	Pellston Rgnl Airport of Emmet County.	1/2684	9/21/11	VOR/DME RWY 5, Amdt 12
17–Nov–11	MI	Pellston	Pellston Rgnl Airport of Emmet County.	1/2685	9/21/11	RNAV (GPS) RWY 23, Orig
17–Nov–11	MI	Pellston	Pellston Rgnl Airport of Emmet County.	1/2686	9/21/11	RNAV (GPS) RWY 32, Orig
17–Nov–11	MI	Pellston	Pellston Rgnl Airport of Emmet County.	1/2697	9/21/11	RNAV (GPS) RWY 5, Orig
17–Nov–11	MI	Pellston	Pellston Rgnl Airport of Emmet County.	1/2701	9/21/11	VOR RWY 23, Amdt 16
17–Nov–11	MI	Pellston	Pellston Rgnl Airport of Emmet County.	1/2702	9/21/11	ILS OR LOC RWY 32, Amdt 11
17–Nov–11	MT	Forsyth	Tillitt Field	1/4400	8/25/11	RNAV (GPS) RWY 26, Orig
17–Nov–11	WA	Yakima	Yakima Air Terminal/ Mcallister Field.	1/4401	8/25/11	RNAV (RNP) Z RWY 27, Orig
17–Nov–11	CA	Santa Barbara	Santa Barbara Muni	1/5791	9/29/11	Takeoff Minimums and Obstacle DP, Amdt 7
17–Nov–11	VA	Leesburg	Leesburg Executive	1/7910	9/19/11	ILS OR LOC RWY 17, Orig
17–Nov–11	VA	Orange	Orange County	1/7922	9/19/11	GPS RWY 8, Orig-B
17–Nov–11	VA	Richlands	Tazewell County	1/7948	9/19/11	RNAV (GPS) RWY 7, Orig
17–Nov–11	PA	Wilkes-Barre/Scranton	Wilkes-Barre/Scranton Intl.	1/7949	9/19/11	ILS OR LOC/DME RWY 4, Amdt 35
17–Nov–11	OR	Medford	Rogue Valley Intl—Medford.	1/8374	9/7/11	Takeoff Minimums and Obstacle DP, Amdt 9A
17–Nov–11	NC	Elkin	Elkin Muni	1/9342	9/19/11	NDB OR GPS RWY 25, Amdt 1

[FR Doc. 2011–26268 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0335]

RIN 1625–AA09

Drawbridge Operation Regulation; Apponagansett River, Dartmouth, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the Padanaram Bridge across the Apponagansett River, mile 1.0, at Dartmouth, Massachusetts. The owner of the bridge requested relief from crewing the bridge in the early morning hours when there have been no requests to open the bridge. It is expected that this change to the regulations would provide relief to the bridge owner while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective November 16, 2011.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0335 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0335 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, 617–223–8364, *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 24, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations Apponagansett River, in the **Federal Register** (76 FR 37041). We received no comments in response to the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The Padanaram Bridge across the Apponagansett River, mile 1.0, at Dartmouth, Massachusetts, has a vertical clearance in the closed position of 9 feet at mean high water and 12 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.587.

The existing drawbridge operation regulations require the draw to open on signal 1 May through 31 October from 5 a.m. to 9 p.m., daily. The following intervals apply to open on signal: The bridge shall open on signal, twice an hour, on the hour and the half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m or on signal, once an hour, on the hour between 9 a.m. and 8 p.m. At all other times the bridge shall open if at least four hours advance notice is given.

The Coast Guard received a request from the owner of the bridge, the Town of Dartmouth, to change the drawbridge operation regulations concerning the daily hours the bridge is crewed from 1 May through 31 October. The bridge owner requested to crew the bridge from 6 a.m. through 9 p.m. instead of 5 a.m. through 9 p.m., daily.

A review of the bridge opening logs reveals that the bridge has not received any requests to open between 5 a.m. and 6 a.m. since 2009.

As a result of the above information the Coast Guard believes it is reasonable for the bridge owner to crew the Padanaram Bridge from 6 a.m. through 9 p.m., 1 May through 31 October, since there have been no requests to open the bridge before 6 a.m.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result no changes were made to this final rule.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There will not be a significant impact. This conclusion is based on the fact that the bridge has not received any requests to open between 5 a.m. and 6 a.m., daily, between May 1 and October 31.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit through the bridge between 1 May through 31 October from 5 a.m. to 6 a.m. This rule would not have a significant economic impact on a substantial number of small entities for the following reason:

The bridge has not received any requests to open between 5 a.m. and 6 a.m., daily, between 1 May and 31 October, since 2009.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.587, revise paragraphs (a) introductory text and (a)(1) to read as follows:

§ 117.587 Apponagansett River.

(a) The draw of the Padanaram Bridge, mile 1.0, shall open on signal from 1 May through 31 October, between 6 a.m. and 9 p.m., daily, as follows:

(1) The bridge shall open on signal, twice an hour, on the hour and half hour between 6 a.m. and 9 a.m. and between 8 p.m. and 9 p.m.

* * * * *

Dated: September 16, 2011.

Daniel A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2011–26545 Filed 10–14–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[EPA–HQ–OAR–2009–0924; FRL–9479–8]

Special Rules Governing Certain Information Obtained Under the Clean Air Act: Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to correct an erroneous reference in EPA's procedures for handling data required under the Mandatory Greenhouse Gas Reporting Rule, which are provided in the Special Rules Governing Certain Information Obtained Under the Clean Air Act. This correction does not change any requirements for entities regulated under the Mandatory Greenhouse Gas Reporting Rule or the final confidentiality determinations that EPA has made for such data.

DATES: This rule is effective on December 1, 2011 without further notice, unless the EPA receives adverse comment by November 16, 2011. If we receive adverse comment by this date, we will publish a timely withdrawal notice in the **Federal Register** to inform the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0924, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHGReportingCBI@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID

No. EPA–HQ–OAR–2009–0924, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0924. The 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 for which 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 that the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the 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 at *http://www.regulations.gov* or in hard copy at the Air Docket office, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9263; *fax number:* (202) 343–2342; *e-mail address: GHGReportingRule@epa.gov.* For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, then select Contact Us.

SUPPLEMENTARY INFORMATION:

Why is EPA using a direct final rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. This change simply revises one section of 40 CFR part 2, subpart B, to correct and clarify a reference. This correction does not alter the requirements for entities regulated by the Mandatory Greenhouse Gas Reporting Rule (40 CFR part 98, hereinafter ''part 98''), nor does it affect the final confidentiality determinations for part 98 data that EPA has made through rulemaking. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate notice that will serve as the proposed rule for this correction should EPA receive adverse comment on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so by the comment deadline listed in the **DATES** section of this document. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal notice in the **Federal Register** to inform the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule.

Submitting CBI. Do not submit CBI to the EPA through *http://www.regulations.gov* or by 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 the 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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Does this action apply to me?

The entities potentially affected by this final rule include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
		MEMS manufacturing facilities.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Fluorinated Gas Production	325120	Industrial gases manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Manufacturing	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petroleum and Natural Gas Systems.	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Electrical Transmission and Distribution Equipment Use.	221121	Electric bulk power transmission and control facilities.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Industrial Wastewater Treatment.	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
Suppliers of Coal Based Liquids Fuels.	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products.	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs.	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Suppliers of Industrial Greenhouse Gases.	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO_2).	325120	Industrial gas manufacturing facilities.
Importers and Exporters of Fluorinated Greenhouse Gases in Pre-charged Equipment or Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	336391	Motor vehicle air-conditioning manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	443111	Household appliance stores.
	423730	Automotive air-conditioners merchant wholesalers.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.
Geologic Sequestration of Carbon Dioxide.	N/A	CO_2 geologic sequestration projects.
Electrical Equipment Manufacture or Refurbishment.	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Industrial Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Injection of Carbon Dioxide	211	Oil and gas extraction projects using CO_2 enhanced oil and gas recovery.
	211111 or 211112	Projects that inject acid gas containing CO_2 underground.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action and 40 CFR part 98. Table 1 of this preamble lists the types of facilities that the EPA is now aware could be affected by this action. Other types of facilities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A, and other subparts as necessary. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Background of Final Rule

On May 26, 2011, the EPA published the Final Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act (76 FR 30782). In that final rule, pursuant to CAA section 114(c), the EPA made confidentiality determinations for certain data elements in part 98. The EPA made these determinations through rulemaking pursuant to CAA section 307(d). (See 76 FR 30782: ''The Administrator determined that this action is subject to the provisions of the Clean Air Act (CAA) section 307(d).'')

In addition, in the same notice, the EPA amended 40 CFR 2.301 by adding a new subsection 2.301(d) that establishes specific procedures for the EPA's handling of data collected under part 98 in accordance with the EPA's final confidentiality determinations for the data. (See 76 FR 30782, 30784, 30815 (May 26, 2011); see also 75 FR 39094, 39098, 39102–03 (July 7, 2010).) Subsection 2.301(d) authorizes the EPA to release or withhold as confidential data collected under part 98 based on confidentiality determinations EPA makes through rulemaking without taking further procedural steps.

II. What is the technical correction to 40 CFR 2.301(d)?

This direct final rule corrects a minor technical error in 40 CFR 2.301(d). Specifically, paragraph (d) erroneously cites the Administrative Procedure Act (hereinafter referred to as ''APA''), 5 U.S.C. 553(c), instead of CAA section 307(d), as the authority under which confidentiality determinations for part 98 data are made. This action corrects the erroneous reference.[1]

It is clear from the preambles to both the proposed and final confidentiality

[1] Paragraph (d) also references CAA section 307(d), which is correct.

determinations rule and the accompanying amendment to 40 CFR 2.301 that the procedures established under 40 CFR 2.301(d) relate to confidentiality determinations made in that rule, which were made under CAA sections 114(c) and 307(d). The public comments on that rulemaking also indicated this understanding (see, e.g., comment EPA–HQ–OAR–2009–0924–0064.1, comment excerpt 6). However, 40 CFR 2.301(d) inadvertently cites 5 U.S.C. 553(c) instead of CAA 307(d) in its reference to the final confidentiality determination rule. While there appears to be no confusion due to this error, EPA believes that we should make this correction to avoid any potential for confusion in the future.

III. Statutory and Executive Order Reviews

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

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

The correction to 40 CFR part 2 does not impose any information collection burden.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's correction to the citation in 40 CFR part 2 on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule will not impose any new requirement on small entities that are not currently required by part 98. The amendments to 40 CFR part 2 are administrative in nature. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action 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. The correction in this final rule revises a citation reference in one section of 40 CFR part 2, subpart B to confirm the original intention of the reference by correcting the citation to statutory authority.

E. Executive Order 13132: Federalism

This change to 40 CFR part 2 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. However, for a more detailed discussion about how part 98 relates to existing state programs, please see Section II of the preamble to the final part 98 rule (74 FR 56266).

The correction to 40 CFR part 2 is administrative in nature and applies to data reported under Part 98 by facilities that directly emit GHGs or supply fuel or chemicals that may emit GHGs when used. Part 98 does not apply to governmental entities unless the government entity owns a facility that directly emit GHGs above threshold levels such as large stationary combustion sources or landfills, so relatively few government facilities would be affected. The change to 40 CFR part 2 also does not limit the power of states or local governments to collect GHG data or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this correction.

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

This action is not expected to have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is administrative in nature and does not impose any new requirements on Tribes. Thus, Executive Order 13175 does not apply to this action.

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

The 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 does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The amendments to 40 CFR part 2 are administrative in nature and therefore do not have any adverse impacts on energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 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. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This change to 40 CFR part 2 is administrative in nature and does not involve technical standards. Therefore, the 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

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 the direct final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the correction noted does not affect the level of protection provided to human health or the environment. The change to 40 CFR part 2 is administrative in nature and therefore does not affect the level of protection provided to human health or the environment.

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 U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 1, 2011.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: October 11, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 2—[AMENDED]

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; sec. 114, Clean Air Act (as amended) (42 U.S.C. 7414).

Subpart B—[Amended]

§ 2.301 [Amended]

■ 2. Section 2.301 is amended by:

■ a. In paragraph (d)(1) introductory text, revising the phrase ''pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c)'' to read ''pursuant to sections 114(c) and 307(d) of the Clean Air Act''.

■ b. In the first sentence of paragraph (d)(2), revising the phrase ''pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c)'' to read ''pursuant to sections 114(c) and 307(d) of the Clean Air Act''.

■ c. In the first sentence of paragraph (d)(3), revising the phrase ''pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c)'' to read ''pursuant to sections 114(c) and 307(d) of the Clean Air Act''.

■ d. In the second sentence of paragraph (d)(4) introductory text, revising the phrase ''pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c)'' to read ''pursuant to sections 114(c) and 307(d) of the Clean Air Act''.

■ e. In paragraph (d)(4)(i), revising the phrase ''pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c)'' to read ''pursuant to sections 114(c) and 307(d) of the Clean Air Act''.

[FR Doc. 2011–26766 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0610; FRL–9479–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Drum and Pail Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision includes amendments to the Code of Maryland (COMAR) 26.11.19.13, Volatile Organic Compounds from Specific Processes, Drum and Pail Coating. Maryland's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for drum and pail coatings and will help Maryland attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. EPA is approving this revision concerning the adoption of the CTG requirements for drum and pail coatings in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on November 16, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0610. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the CAA, 42 U.S.C. 7511a(b)(2), requires that states having moderate nonattainment areas for ozone revise their SIP to include provisions requiring the implementation of RACT for certain sources, including categories of volatile organic compound (VOC) sources covered by a CTG document issued by the Administrator between November 15, 1990 and the date of attainment. EPA originally developed CTG standards for miscellaneous metal and plastic products in 1978, which includes drum and pail coating, and revised them in 2008. Maryland subsequently made changes to its SIP which adopted EPA's CTG standards for drum and pail coatings. The formal SIP revision was submitted by Maryland to EPA on June 22, 2011. On August 18, 2011 (76 FR 51314), EPA published a notice of proposed rulemaking (NPR) for Maryland. The NPR proposed approval of Maryland's SIP revision for adoption of the CTG standards for drum and pail coatings. No comments were received on the NPR.

II. Summary of SIP Revision

On June 22, 2011, the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision (#11–04) concerning the adoption of the emission limits for drum and pail coatings, part of the EPA miscellaneous metal and plastic parts coatings CTG. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. The State of Maryland has adopted EPA's CTG standards for drum and pail coatings. This regulation is found in COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. Specifically, this revision amends the existing regulation at Section 26.11.19.13 by making it specific to drum and pail coating processes and adopting emission limits (Table 1) for this industry.

TABLE 1—DRUM AND PAIL COATING STANDARDS

Coating types	lbs VOC/gallon coating (minus water)	kg VOC/liter coating (minus water)
New, Exterior	2.8	0.34
New, Interior	3.5	0.42
Reconditioned, Exterior	3.5	0.42
Reconditioned, Interior	4.2	0.50

Other specific requirements concerning this rulemaking and the rationale for EPA's action are explained in the NPR and the Technical Support Document (TSD) and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Maryland's adoption of the CTG requirements for drum and pail coatings as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action concerning Maryland's adoption of CTG standards for drum and pail coatings may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 5, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.19.13 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
	26.11.19 Volatile Organic Compounds from Specific Processes			
*	*	*	*	*
26.11.19.13	Drum and Pail Coating	5/16/11	10/17/11 [Insert page number where the document begins].	Revisions to Section title and Sections .13A, .13B, and .13C and addition of new Section .13D.
*	*	*	*	*

* * * * *

[FR Doc. 2011–26639 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–201152; FRL–9480–3]

Approval and Promulgation of Air Quality Implementation Plans; South Carolina; Update to Materials Incorporated by Reference; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On April 25, 2011, EPA published a final rule providing the public with notice of the update to the South Carolina State Implementation Plan (SIP) compilation. This action corrects typographical errors in the regulatory language in EPA's April 25, 2011, final rule.

DATES: This action is effective October 17, 2011.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin can be reached at 404–562–9040, or via electronic mail at *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION: This action corrects typographical errors in the regulatory language for several entries that appear in paragraphs (c) and (e) of South Carolina's Identification of Plan at 40 CFR 52.2120. The final action, which provided the public with notice of the update to the South Carolina SIP compilation, was approved by EPA on April 25, 2011 (76 FR 22817). However, EPA inadvertently cited, incorrect State effective dates, EPA approval dates, and **Federal Register** notice citations. Therefore, EPA is correcting these typographical errors by inserting the correct entries into paragraphs (c) and (e) of 40 CFR 52.2120.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to correct inadvertent errors contained in paragraphs (c) and (e) of 40 CFR 52.2120 of the rulemaking and has no substantive impact on EPA's April 25, 2011, approval. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of EPA's action to approve the changes to

paragraphs (c) and (e) of 40 CFR 52.2120.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action merely corrects typographical errors in paragraphs (c) and (e) of a prior rulemaking by correcting the State effective dates, EPA approval dates, and **Federal Register** notice citations as identified above in 40 CFR 52.2120 in a revision, which EPA approved on April 25, 2011. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely corrects typographical errors in paragraphs (c) and (e) of a prior rulemaking by correcting the citation as identified above in 40 CFR 52.2120, which EPA approved on April 25, 2011, and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects inadvertent errors in paragraphs (c) and (e) of a prior rule, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely corrects typographical errors in paragraphs (c) and (e) of a prior rulemaking by correcting citations as identified above in 40 CFR 52.2120 in a revision which EPA approved on April 25, 2011, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 6, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120 is amended as follows:

■ a. In paragraph (c), revise the entries for:

■ i. Section V;

■ ii. Standard No. 4, Sections IX and X;

■ iii. Standard No. 5, Section II, Parts B through D, G, H, O through R, and T;

■ iv. Standard No. 7 heading;

■ v. Standard No. 7, Regulation No. 62.7, Sections I through IV; and

■ vi. Standard No. 7, Regulation No. 62.96.

■ b. In paragraph (e), revise the first, fourth, and fifth entries.

§ 52.2120 Identification of plan.

* * * * *

(c) EPA approved regulations.

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal Register notice
* *	* * *	*	*	
Section V	Credible Evidence	7/27/2001	11/13/2002	67 FR 68767
* *	* * *	*	*	
Standard No. 4	Emissions From Process Industries			
* *	* * *	*	*	
Section IX	Visible Emissions	4/22/1988	7/2/1990	55 FR 27226
Section X	Non-Enclosed Operations	4/22/1988	7/2/1990	55 FR 27226
* *	* * *	*	*	
Standard No. 5	Volatile Organic Compounds.			
* *	* * *	*	*	
Section II	Provisions for Specific Sources.			
Part B	Surface Coating of Coils	8/24/1990	2/4/1992	57 FR 4158
Part C	Surface Coating of Paper, Vinyl, and Fabric	8/24/1990	2/4/1992	57 FR 4158
Part D	Surface Coating of Metal Furniture and Large Appliances.	8/24/1990	2/4/1992	57 FR 4158
* *	* * *	*	*	
Part G	Surface Coating of Flat Wood Paneling	2/25/1983	10/31/1983	48 FR 50078
Part H	Graphic Arts—Rotogravure Flexography	2/25/1983	10/31/1983	48 FR 50078
* *	* * *	*	*	
Part O	Petroleum Liquid Storage in Fixed Roof Tanks	2/25/1983	10/31/1983	48 FR 50078
Part P	Petroleum Liquid Storage in External Floating Roof Tanks.	2/25/1983	10/31/1983	48 FR 50078
Part Q	Manufacture of Synthesized Pharmaceutical Products.	2/25/1983	10/31/1983	48 FR 50078
Part R	Manufacture of Pneumatic Rubber Tires	2/25/1983	10/31/1983	48 FR 50078
* *	* * *	*	*	
Part T	Bulk Gasoline Terminals and Vapor Collection Systems.	2/25/1983	10/31/1983	48 FR 50078
* *	* * *	*	*	
Standard No. 7	Prevention of Significant Deterioration[1]	6/24/2005	6/2/2008	73 FR 31378
* *	* * *	*	*	
Regulation No. 62.7	Good Engineering Practice Stack Height	5/23/1986	5/28/1987	52 FR 19858
Section I	General	5/23/1986	5/28/1987	52 FR 19858
Section II	Applicability	5/23/1986	5/28/1987	52 FR 19858
Section III	Definitions and Conditions	5/23/1986	5/28/1987	52 FR 19858
Section IV	Public Participation	5/23/1986	5/28/1987	52 FR 19858
Regulation No. 62.96	Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2) Budget Trading Program General Provisions.	10/24/2008	10/16/2009	74 FR 53167
* *	* * *	*	*	

[1] This regulation (submitted on July 1, 2005) includes two portions of EPA's 2002 NSR Reform Rules that were vacated by the D.C. Circuit Court—Pollution Control Projects (PCPs) and clean units. As a result, EPA is disapproving all rules and/or rule sections in the South Carolina PSD rules referencing clean units or PCPs. Specifically, the following South Carolina rules are being disapproved: (a)(2)(iv)(e); (a)(2)(iv)(f) (second sentence only); (a)(2)(vi); (b)(12); (b)(30)(iii)(h); (b)(34)(iii)(b); (b)(34)(vi)(d); (b)(35); (r)(6) (only the reference to the term "clean unit" is being disapproved. The remainder of this regulatory provision is being approved); (r)(7) (only the reference to the term "clean unit" is being disapproved. The remainder of this regulatory provision is being approved); (x); (y) and (z).

* * * * *

(e) EPA-approved South Carolina non-regulatory provisions.

Provision	State effective date	EPA approval date	Explanation
Cherokee County Ozone Attainment Demonstration and Ten-year Maintenance Plan.	6/26/1998	12/18/1998, 63 FR 70019.	
* * * *		* *	*
Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah Early Action Compact Areas.	6/25/2004	8/26/2005, 70 FR 50195	
South Carolina Transportation Conformity Air Quality Implementation Plan.	11/19/2008	7/28/2009, 74 FR 37168	
* * * *		* *	*

[FR Doc. 2011–26772 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0600; FRL–9479–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Plastic Parts and Business Machines Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision includes amendments to the Code of Maryland (COMAR) 26.11.19.07, Volatile Organic Compounds from Specific Processes, Paper, Fabric, Film and Foil Coating, and adds new COMAR 26.11.19.07–2, Plastic Parts and Business Machines Coating. Maryland's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for plastic parts and business machines coatings and will help Maryland attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. EPA is approving this revision concerning the adoption of the CTG requirements for plastic parts and business machines coatings in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on November 16, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0600. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the CAA, 42 U.S.C. 7511a(b)(2), requires that states having moderate nonattainment areas for ozone revise their SIP to include provisions requiring the implementation of RACT for certain sources, including categories of volatile organic compound (VOC) sources covered by a CTG document issued by the Administrator between November 15, 1990 and the date of attainment. EPA originally developed CTG standards for miscellaneous metal and plastic products, which includes plastic parts and business machines coating, in 1978 and revised them in 2008. Maryland subsequently made changes to its SIP which adopted EPA's CTG standards for plastic parts and business machines coatings. The formal SIP revision was submitted by Maryland to EPA on June 22, 2011. On August 19, 2011 (76 FR 51922), EPA published a notice of proposed rulemaking (NPR) for Maryland. The NPR proposed approval of Maryland's SIP revision for adoption of the CTG standards for plastic parts and business machines coatings. No comments were received on the NPR.

II. Summary of SIP Revision

On June 22, 2011, the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision (#11–03) concerning the adoption of the emission limits for plastic parts and business machines coatings, part of the EPA miscellaneous metal and plastic parts coatings CTG. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. The State of Maryland has adopted EPA's CTG standards for plastic parts and business machine coating processes. These regulations are in COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. Specifically, this revision amends the existing regulation at section 26.11.19.07 by moving existing VOC coating standards for plastic parts and vinyl from this section to a new section, COMAR 26.11.19.07–2, Plastic Parts and Business Machines Coating. Additionally, coating standards for plastic parts and business machines from EPA's CTG are being adopted into COMAR 26.11.19.07–2, as well as new definitions and application methods. Tables 1–3 below outline the emission standards adopted by Maryland for plastic parts coatings, business machines coatings, and printing standards.

TABLE 1—PLASTIC PARTS COATING STANDARDS

Coating installation	Applicability (pounds of VOC per day)	Pounds of VOC per gallon of coating (as applied minus water)	Kilograms of VOC per Liter of coating (as applied minus water)
Decorative coating of other plastic parts	20	5.9	0.70
General, one-component	15	2.3	0.28
General, multi-component	15	3.5	0.42
Electric dissipating coatings and shock-free coatings	15	6.7	0.80
Extreme performance	15	3.5	0.42
Metallic	15	3.5	0.42
Military specification, one-component	15	2.8	0.34
Military specification, multi-component	15	3.5	0.42
Mold seal	15	6.3	0.76
Multi-colored coatings	15	5.7	0.68
Optical coatings	15	6.7	0.80
Plastic vehicle parts	20	3.0	0.36
Vacuum-metalizing	15	6.7	0.80
Vinyl	20	3.8	0.45

TABLE 2—BUSINESS MACHINES COATING STANDARDS

Coating installation	Applicability (pounds of VOC per day)	Pounds of VOC per gallon of coating (as applied minus water)	Kilograms of VOC per liter of coating (as applied minus water)
Prime coat	15	2.9	0.35
Topcoat	15	2.9	0.35
Texture coat	15	2.9	0.35
Fog coat	15	2.9	0.26
Touchup and repair	15	2.9	0.35

TABLE 3—PRINTING STANDARDS

Printing installation	Applicability (pounds of VOC per day)	Pounds of VOC per gallon of coating (as applied minus water)	Kilograms of VOC per liter of coating (as applied minus water)
Plastic other than vinyl	Non-major source	5.8	0.69
Plastic other than vinyl	Major source as defined in COMAR 26.11.19.01B(4).	3.8	0.45
Vinyl	20	3.8	0.45

Other specific requirements concerning this rulemaking and the rationale for EPA's action are explained in the NPR and the Technical Support Document (TSD) and will not be restated here.

No public comments were received on the NPR.

III. Final Action

EPA is approving Maryland's adoption of the CTG requirements for plastic parts and business machines coatings as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action concerning Maryland's adoption of CTG standards for plastic parts and business machines coatings may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 03, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.19.07 and adding an entry for COMAR 26.11.19.07–2 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
	26.11.19 Volatile Organic Compounds from Specific Processes			
*	*	*	*	*
26.11.19.07	Paper, Fabric, Film, and Foil Coating	5/16/11	10/17/11 [Insert page number where the document begins].	Revisions to Section title and Sections .07A and .07C(3).
*	*	*	*	*
26.11.19.07–2	Plastic Parts and Business Machines Coating	5/16/11	10/17/11 [Insert page number where the document begins].	New Regulation.
*	*	*	*	*

* * * * *

[FR Doc. 2011–26638 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2009–0844; FRL–9463–5]

RIN 2025–AA27

Hydrogen Sulfide; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Lifting of Administrative Stay for Hydrogen Sulfide.

SUMMARY: EPA is announcing that it is lifting the Administrative Stay of the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 toxic chemical release reporting requirements for hydrogen sulfide (Chemical Abstracts Service Number (CAS No.) 7783–06–4). Hydrogen sulfide was added to the EPCRA section 313 list of toxic chemicals in a final rule published in the **Federal Register** on

December 1, 1993. However, on August 22, 1994, EPA issued an Administrative Stay of the reporting requirements for hydrogen sulfide in order to evaluate issues brought to the Agency's attention after promulgation of the final rule concerning the human health effect basis for the listing and the Agency's use of exposure analysis in EPCRA section 313 listing decisions. Although the final rule listing hydrogen sulfide under section 313 of EPCRA remained in force, the stay deferred the reporting requirements for hydrogen sulfide while EPA completed this further evaluation. EPA completed its further evaluation of additional information that has become available since the stay was put in place regarding the human health and environmental effects of hydrogen sulfide, and the Agency published a position that the stay should be lifted in the February 26, 2010, **Federal Register** document ''Intent to Consider Lifting Administrative Stay; Opportunity for Public Comment.'' Based on EPA's further evaluation and the consideration of the public comments received on the notice of intent, EPA continues to believe that the Administrative Stay should be lifted. By this current action, EPA is not revisiting the original listing decision, which was accomplished by final rule on December 1, 1993. Rather, EPA is lifting the Administrative Stay of the reporting requirements for hydrogen sulfide.

DATES: This action is effective on October 17, 2011, such that the first reports on hydrogen sulfide will be due on July 1, 2013 for reporting year 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2009–0844. 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 OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0677; e-mail: *bushman.daniel@epa.gov,* for specific information on this document. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use hydrogen sulfide. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C. 13106. EPCRA section 313 established an initial list of toxic chemicals composed of more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets forth criteria for these actions. Specifically, EPCRA section 313(d)(2) states that EPA may add a chemical to the list if ''there is sufficient evidence to establish any one'' of the listing criteria. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, EPCRA section 313(d)(3) states that to remove a chemical from the list, EPA must determine that ''there is not sufficient evidence to establish any'' of

the Section 313(d)(2) criteria. Therefore, to remove a chemical, EPA must demonstrate that none of the criteria are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) Cancer or teratogenic effects, or

(ii) Serious or irreversible—

(I) Reproductive dysfunctions,

(II) Neurological disorders,

(III) Heritable genetic mutations, or

(IV) Other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) Its toxicity,

(ii) Its toxicity and persistence in the environment, or

(iii) Its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions under EPCRA section 313(e). EPA also issued guidance in the **Federal Register** of May 23, 1991 (56 FR 23703) regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. In addition, EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Background Information

A. What is the history of the listing of hydrogen sulfide under EPCRA section 313?

In response to a petition from the Natural Resources Defense Council and the Governor of New York, hydrogen sulfide, along with 20 other chemicals and two chemical categories, was added to the EPCRA section 313 list of toxic chemicals as part of a 1993 final rule (December 1, 1993, 58 FR 63500). Hydrogen sulfide was listed under the criteria of EPCRA section 313(d)(2)(B) (chronic human health effects) based on chronic neurotoxic effects in humans and under EPCRA section 313(d)(2)(C) (environmental effects) based on acute aquatic toxicity. However, on August 22, 1994 (59 FR 43048), EPA issued an Administrative Stay of the EPCRA section 313 reporting requirements for hydrogen sulfide. Although the final rule listing hydrogen sulfide under section 313 of EPCRA remained in force, the stay deferred the reporting requirements for hydrogen sulfide. On February 26, 2010, EPA issued a document in the **Federal Register** entitled ''Intent to Consider Lifting Administrative Stay; Opportunity for Public Comment'' (75 FR 8889). That document provided the public with the opportunity to comment on EPA's review of the currently available data on the human health and environmental effects of hydrogen sulfide—specifically, chronic respiratory effects, chronic neurotoxic effects, and acute, chronic and early-life stage aquatic toxicity—and EPA's belief that the Administrative Stay should be lifted based on that data.

B. What was the basis for the administrative stay?

After the final rule was issued adding hydrogen sulfide to the EPCRA section 313 list of toxic chemicals, some members of the regulated community expressed a concern that the ''chronic human health effects'' basis for listing hydrogen sulfide under EPCRA section 313(d)(2)(B) had changed between the proposed rule (September 8, 1992, 57 FR 41020) and the final rule (December 1, 1993, 58 FR 63500), and that commenters on the proposed rule therefore did not have an opportunity to comment on that individual basis for the listing. Specifically, although the Agency cited the same acute aquatic toxicity as an ''environmental effects'' basis for the listing under EPCRA section 313(d)(2)(C) in both the proposed and final rules, the Agency also cited chronic respiratory effects as a ''chronic human health effects'' basis under EPCRA section 313(d)(2)(B) in the proposed rule, but chronic neurotoxic effects as a ''chronic human health effects'' basis under that same provision in the final rule. In addition, after issuance of the final rule, some members of the regulated community expressed concern that EPA's decision not to include an exposure analysis in deciding to list hydrogen sulfide on the basis of chronic human health effects was inconsistent with past Agency practice.

Although EPA did not agree that it had been inconsistent in its use of exposure analyses, and notwithstanding the fact that the listing decision was appropriate based on the acute aquatic toxicity finding alone under EPCRA section 313(d)(2)(C), the Agency issued an Administrative Stay of the reporting requirements for hydrogen sulfide in order to review the concerns raised after issuance of the final rule by some members of the regulated community.

C. What is EPA's rationale for lifting the administrative stay for hydrogen sulfide?

EPA's technical evaluation of hydrogen sulfide, as discussed in detail in the February 26, 2010 **Federal Register** document (75 FR 8889), shows that it can reasonably be anticipated to cause chronic health effects in humans. The chronic health effects have been observed in laboratory animals at concentrations as low as 28 milligrams per cubic meter (mg/m^3) (20 parts per million (ppm)) for neurotoxicity and 41.7 mg/m^3 (30 ppm) for upper respiratory toxicity. In addition, EPA's technical evaluation of hydrogen sulfide also shows that it can reasonably be anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms. Examples of hydrogen sulfide's ecological toxicity include acute toxicity (96-hour LC_{50} (*i.e.,* the concentration that is lethal to 50% of test organisms)) values for freshwater fish that ranged from 0.0149 milligrams per liter (mg/L) (fathead minnow) to 0.0448 mg/L (bluegill), indicating high aquatic toxicity. Examples of hydrogen sulfide's chronic ecological toxicity include freshwater fish values that ranged from a 6-week lowest-observed-effect-concentration (LOEC) (growth rate) of 0.0005 mg/L in a tropical fish (*Mystus nemurus*) to a 430-day LOEC (final weight) of 0.009 mg/L for goldfish, also indicating high aquatic toxicity.

Based on the above findings, EPA believes that there is no basis for continuing the Administrative Stay of the reporting requirements for hydrogen sulfide, and that the Administrative

Stay should therefore be lifted. As an aside, EPA notes also that it believes that the above findings clearly demonstrate the correctness of the Agency's final decision in December 1993 to list hydrogen sulfide on the EPCRA section 313 toxic chemicals list based on the listing criteria in EPCRA sections 313(d)(2)(B) and (C).

Finally, in accordance with EPA's stated policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is appropriate for determining whether hydrogen sulfide meets the criteria of EPCRA section 313(d)(2)(B) or (C), and therefore the Administrative Stay should not be continued for lack of an exposure analysis. As EPA explained in the Intent to Lift the Stay (and as explained in Unit IV.A.1.c. of this Notice):

> EPA has determined that hydrogen sulfide can reasonably be anticipated to cause serious or irreversible chronic human health effects at relatively low doses and thus is considered to have moderately high to high chronic toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be listed for chronic effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61432, 61433, 61440–61442). Hydrogen sulfide has also been determined to cause ecotoxicity at relatively low concentrations, and thus is considered to have high ecotoxicity. EPA believes that chemicals that induce death or serious adverse effects in aquatic organisms at relatively low concentrations (*i.e.,* they have high ecotoxicity) have the potential to cause significant changes in the population of fish and other aquatic organisms, and can therefore reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. EPA does not believe that it is required to consider exposure for chemicals that have high ecotoxicity based on a hazard assessment when determining if a chemical can be listed for effects pursuant to EPCRA section 313(d)(2)(C) (see 59 FR 61432, 61433, 61440–61442). (75 FR 8889, 8893 (Feb. 26, 2010)).

D. What is the purpose of this document?

The purpose of this document is to respond to the public comments received on EPA's February 26, 2010, **Federal Register** document ''Intent to Consider Lifting Administrative Stay; Opportunity for Public Comment'' (75 FR 8889), and to give notice that EPA is lifting the Administrative Stay of the EPCRA section 313 toxic chemical release reporting requirements for hydrogen sulfide. With the lifting of this stay, pursuant to Section 313 of EPCRA, certain facilities that manufacture, process, or otherwise use hydrogen sulfide in amounts above reporting threshold levels must now comply with the reporting requirements that have been in place since hydrogen sulfide was added to the EPCRA section 313 list in 1993. The first reports on hydrogen sulfide will be due on July 1, 2013 for reporting year 2012.

IV. What comments did EPA receive on the intent to consider lifting the administrative stay and what are EPA's responses to those comments?

EPA received fifteen comments on the **Federal Register** document ''Intent to Consider Lifting Administrative Stay; Opportunity for Public Comment'' (75 FR 8889). The comments represented 6 individuals, 32 environmental groups, one state agency, and 10 industry groups. Environmental groups that commented included the Food & Water Watch, National Association of Clean Water Agencies, Natural Resources Defense Council, Waterkeeper Alliance and one comment submitted by 28 other environmental organizations. The comments from the individuals, environmental groups, and state agency were supportive of EPA's intent to lift the Administrative Stay. Many of these groups provided additional information to support EPA's action as well as requesting other actions such as listing additional industry sectors that have significant releases of hydrogen sulfide. The most extensive comments came from the Hydrogen Sulfide Consortium, whose members are: American Coke and Coal Chemicals Institute, American Forest and Paper Association, American Petroleum Institute, Asphalt Institute, Carbon Disulfide Coalition, Corn Refiners Association, National Petrochemical and Refiners Association, and The Sulphur Institute. The most significant opposing comments are summarized and responded to below. The complete set of comments and EPA's responses can be found in the response to comment document in the docket for this action (Ref. 1).

A. Comments From the Hydrogen Sulfide Consortium

1. *Scope of Comments.* Commenters claim that ''EPA cannot properly limit comments to whether or not EPA should lift its Administrative Stay of EPCRA section 313 reporting requirements,'' but rather must revisit the original listing decision accomplished by final rule in 1993. In support of this argument, commenters assert that: (1) EPA stated, when it issued the Administrative Stay in 1994, that it would revisit the original listing decision; (2) EPA cited chronic respiratory effects as one of the bases for listing under EPCRA section 313(d)(2)(B) in the proposed rule, but chronic neurotoxic effects as a basis under that same provision in the final rule; (3) EPA adopted its current policy regarding exposure analyses subsequent to the 1993 listing of hydrogen sulfide; and (4) EPA ''must make a new listing determination before it may lift [the stay].''

For the reasons stated below, EPA disagrees with commenters that EPA must revisit the original listing decision in the context of EPA's consideration of lifting the Administrative Stay of the EPCRA reporting requirements for hydrogen sulfide. Based upon our current review of the science, as presented in EPA's technical evaluation of hydrogen sulfide, which is discussed in detail in the February 26, 2010 **Federal Register** document (75 FR 8889) and summarized in Unit III.C. of this document, EPA has determined that there is no need to re-visit the existing listing determination. Before addressing each of the commenter's arguments in turn, however, a brief reiteration of the factual background is useful.

As described in detail below, EPCRA section 313(d)(2) states that EPA may add a chemical to the list if ''there is sufficient evidence to establish any *one*'' (emphasis added) of the listing criteria specified in section 313(d)(2). Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met.

EPA proposed to add hydrogen sulfide to the EPCRA section 313 list of toxic chemicals on September 8, 1992 (57 FR 41020) based on a determination that there was sufficient evidence establishing both chronic human health effects per EPCRA section 313(d)(2)(B) (specifically, chronic respiratory effects) and environmental effects per EPCRA section 313(d)(2)(C) (specifically, acute aquatic toxicity). On December 1, 1993, EPA promulgated a final rule adding hydrogen sulfide to the EPCRA section 313 list of toxic chemicals (58 FR 63500) (effective January 1, 1994). In the final rule, the listing decision was based on a determination that there was sufficient evidence establishing environmental effects per EPCRA section 313(d)(2)(C) (specifically, the same acute aquatic toxicity as identified in the proposed rule) and chronic human health effects per EPCRA section 313(d)(2)(B). In the final rule, however, the chronic human health effects finding was based on chronic neurotoxic effects, instead of chronic respiratory effects as stated in the proposed rule.

After the final rule was issued adding hydrogen sulfide to the EPCRA section 313 list, and notwithstanding the fact

that the Agency cited the same acute aquatic toxicity as an ''environmental effects'' basis for the listing under EPCRA section 313(d)(2)(C) in both the proposed rule and the final rule, some members of the regulated community expressed a concern that the Agency cited chronic respiratory effects as a ''chronic human health effects'' basis under EPCRA section 313(d)(2)(B) in the proposed rule, but chronic neurotoxic effects as a ''chronic human health effects'' basis under that same provision in the final rule. In addition, after issuance of the final rule, some members of the regulated community expressed concern that EPA's decision not to include an exposure analysis in deciding to list hydrogen sulfide on the basis of chronic human health effects was inconsistent with past Agency practice. As a result of these concerns, some commenters threatened to bring legal action challenging the final rule.

In response to the post-promulgation comments and concerns raised by some in the regulated community, and notwithstanding the fact that the listing decision was appropriate based on the acute aquatic toxicity finding alone under EPCRA section 313(d)(2)(C), EPA issued an Administrative Stay of the EPCRA section 313 reporting requirements for hydrogen sulfide on August 22, 1994 (59 FR 43048) in order to review those post-promulgation comments and concerns.

The stay issued on August 22, 1994 made clear that: ''The effect of this stay is to *defer reporting* on [hydrogen sulfide] while the Agency reviews new data and information made available *subsequent to the promulgation of the final rule''* (59 FR 43048 (Aug. 22, 1994) (emphasis added)). As a result, while the subsequent stay deferred reporting requirements, the stay did not remove hydrogen sulfide from the EPCRA section 313 list or alter that final listing determination, which remained in effect as of January 1, 1994. The listing determination was never administratively or judicially challenged.

On February 26, 2010, EPA issued a notice announcing its ''Intent to Consider Lifting [the hydrogen sulfide] Administrative Stay; Opportunity for Public Comment.'' 75 FR 8889 (hereinafter *Intent to Lift the Stay*). That document stated: ''The purpose of this document is to provide the public with the opportunity to comment on EPA's review of the currently available data on the human health and environmental effects of hydrogen sulfide * * * and EPA's belief that the Administrative Stay should be lifted based on that data* * *. In addition, this document addresses the concerns raised regarding use of exposure analyses.'' *Id.* at 8891. The Intent to Lift the Stay notice clearly explained: ''By this current action, *EPA is not revisiting the original listing decision,* which was accomplished by final rule on December 1, 1993. Rather, EPA is merely presenting its rationale for why the Administrative Stay of the reporting requirements for hydrogen sulfide should be lifted.'' *Id.* at 8889 (emphasis added).

a. *EPA Statements when Issuing the Stay.* Commenters first argue that EPA cannot now limit comment to whether or not to lift the stay because the Agency stated, when it issued the Administrative Stay in 1994, that it intended, at some point in the future, to ''seek comment on the Agency's initial determination for [hydrogen sulfide].'' 59 FR at 43049. Specifically, the Administrative Stay stated:

> [T]he Agency will be issuing a forthcoming **Federal Register** notice which will seek comment on the Agency's initial determination for [hydrogen sulfide], * * * procedural issues concerning the initial final rule, and generally, comments (and any supporting data) on whether the Agency should either propose to delete [hydrogen sulfide] or affirm its initial determination and dissolve today's Administrative Stay. (59 FR at 43049).

Hydrogen sulfide was listed under section 313 of EPCRA by final rule on December 1, 1993. The stay did not remove hydrogen sulfide from the EPCRA section 313 list or alter that final listing determination. The 1993 listing decision was appropriate based on the acute aquatic toxicity finding alone under EPCRA section 313(d)(2)(C), which was included in both the proposed and final rules and never questioned. Therefore, EPA does not believe it is necessary or appropriate to revisit the 1993 final listing of hydrogen sulfide in order to lift the stay of reporting requirements.

Further, the Agency believes that its action in taking comment on its intent to lift the stay is substantially in accord with the course of action it described in issuing the stay in 1994. In the Intent to Lift the Stay notice, the Agency discussed and invited comment on the data underlying its consideration of the matter and EPA's application of its policy regarding exposure assessment to the listing decision. As described in the Intent to Lift the Stay notice, EPA's planned course of action arises out of EPA's review of the currently available data, which clearly demonstrate both chronic health effects in humans (upper respiratory tract toxicity and neurotoxicity) and significant adverse effects in aquatic organisms (acute, chronic, and early life stage). Further, EPA's consideration of these effects is fully consistent with its policy on exposure assessment. Based on these findings, EPA believes that there is no basis for continuing the Administrative Stay of the reporting requirements for hydrogen sulfide, and that the Administrative Stay should therefore be lifted.

Moreover, these findings also demonstrate that there is no basis to consider delisting hydrogen sulfide. EPCRA section 313(d)(3) states that to remove a chemical from the list, EPA must determine that ''there is not sufficient evidence to establish *any''* of the Section 313(d)(2) criteria (emphasis added). Therefore, to remove a chemical, EPA must demonstrate that none of the criteria are met. As EPA's review of the currently available data in the context of its consideration of lifting the Administrative Stay demonstrates, EPA cannot show that none of the criteria are met. Indeed, the Agency believes that the only course available is to dissolve the stay, which it is doing through notice-and-comment, and which is substantially in accord with at least one of the alternative courses anticipated in 1994.

Finally, to the extent that the commenters are suggesting that EPA is legally prohibited from now limiting comment to the issue of whether or not to lift the Administrative Stay based on the statements in the preamble the Agency made (excerpted above) when issuing the Administrative Stay, EPA respectfully notes that these preamble statements do not create such a legal obligation. See, *e.g.*, *Natural Resources Defense Council* v. *EPA,* 559 F.3d 561, 564–65 (D.C. Cir. 2009).

b. *Proposed and Final Chronic Human Health Effects.* Second, commenters argue that EPA cannot now limit comment to whether or not to lift the stay because EPA cited chronic respiratory effects as one of the bases for listing under EPCRA section 313(d)(2)(B) in the proposed rule, but chronic neurotoxic effects as a basis under that same provision in the final rule.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets forth criteria for these actions. The EPCRA section 313(d)(2) criteria are:

> (A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) Cancer or teratogenic effects, or

(ii) Serious or irreversible—

(I) Reproductive dysfunctions,

(II) Neurological disorders,

(III) Heritable genetic mutations, or

(IV) Other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) Its toxicity,

(ii) Its toxicity and persistence in the environment, or

(iii) Its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

While it is true that the Agency cited chronic respiratory effects as a ''chronic human health effects'' basis under EPCRA section 313(d)(2)(B) in the proposed rule, but chronic neurotoxic effects as a ''chronic human health effects'' basis under that same provision in the final rule, it bears emphasizing once again that the Agency also separately cited the same acute aquatic toxicity as an ''environmental effects'' basis for the listing under EPCRA section 313(d)(2)(C) in both the proposed and final rules. As a result, and in light of the fact that EPCRA section 313(d)(2) expressly allows EPA to add a chemical to the list if ''there is sufficient evidence to establish any *one''* of the listing criteria (emphasis added), the 1993 listing decision was appropriate based on the acute aquatic toxicity finding alone under EPCRA section 313(d)(2)(C). That basis for the listing was never questioned and was and continues to be supported by the data relied upon by EPA in determining that the stay should be lifted. Any procedural error that may have occurred regarding the section 313(d)(2)(B) ''chronic human health effects'' finding was harmless in light of the unchallenged section 313(d)(2)(C) ''environmental effects'' finding presented in both the proposed and final rules. This analysis also played directly into EPA's decision to proceed in the manner it has, as opposed to rigidly following its stated intentions in 1994.

EPA is currently *lifting the stay* of hydrogen sulfide reporting requirements—a substance that has been and remains listed under EPCRA since promulgation of the final rule on December 1, 1993—based on EPA's review of the currently available data, which clearly demonstrate both chronic health effects in humans (upper respiratory tract toxicity and neurotoxicity) and significant adverse effects in aquatic organisms (acute, chronic, and early life stage). EPA is not revisiting the original listing determination, and comments on the original listing decision are beyond the scope of this action.

c. *EPA's Exposure Analysis Policy.* Third, commenters argue that EPA cannot now limit comment to whether or not to lift the stay because EPA adopted its current policy regarding exposure analysis subsequent to the 1993 listing of hydrogen sulfide.

EPA did not ''adopt a new policy'' on its use of exposure analysis for listing chemicals under EPCRA section 313 subsequent to the listing of hydrogen sulfide in 1993. Instead, the Agency's then-existing position on the use of exposure analyses in listing decisions under EPCRA section 313 was presented in a proposed rule in the **Federal Register** of January 12, 1994 (59 FR 1788). That proposed rule provided the public with the opportunity to comment on the Agency's then-existing interpretation of the statutory listing criteria as it relates to the use of exposure considerations. After considering the comments received, EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a ''chemical expansion'' final rule, including a statement clarifying its interpretation of the statutory requirements regarding how exposure is considered in listing decisions. Subsequent to that final rule, EPA's interpretation of the statutory listing criteria as it relates to the consideration of exposure was upheld in *National Oilseed Processors Ass'n.* v. *Browner,* 924 F. Supp. 1193 (D.D.C. 1996), aff'd in part & remanded in part, *Troy Corp.* v. *Browner,* 120 F.3d 277 (D.C. Cir. 1997).

As stated in the chemical expansion final rule:

Through this rulemaking, EPA is clarifying its position regarding the use of hazard, exposure, and risk in listing decisions under EPCRA section 313. EPA will consider exposure factors when making determinations under section 313(d)(2)(A) (acute human toxicity). In addition, EPA has discretion to consider exposure factors where appropriate for determinations under sections 313(d)(2)(B) (chronic human toxicity) and (C) (environmental toxicity), and that there is a broader range of circumstances in which exposure will be considered under section 313(d)(2)(C) than under (B).

EPA has reviewed its past listing decisions in light of this clarification, and believes that its prior listing determinations have been consistent in the consideration of exposure in 31 of the 32 listing/delisting determinations previous to this action * **(59 FR 61442 (Nov. 30, 1994) (emphasis added)).

In *Troy Corp.* v. *Browner,* the DC Circuit agreed with EPA, finding:

Were the EPA to abandon a long-held exposure policy and take a new direction we would, as urged, require a thorough explanation of its reasons for doing so. Yet, *the EPA's pronouncement in its preamble of its exposure policy is not a change in course.* With one exception, the EPA has consistently stated, as it does in this rulemaking, that it will consider exposure under subsection (B) only when the chemical was of ''low to moderately low'' toxicity. * * * [T]he agency has long maintained that it would consider exposure under subheading (B) only for low toxicity chemicals. The inorganic fluorides petition was denied over ten years ago. Since that time, the agency has made several dozen listing and delisting decisions under EPCRA. The inorganic fluorides case was the only instance in which the agency articulated a policy contrary to the one explicated in this rulemaking. Under these circumstances *we cannot say that the agency has departed from prior practice* in a way that requires more explanation than was provided. (*Troy Corp.* v. *Browner,* 120 F.3d at 287 (emphasis added) (citation omitted)).

Thus, EPA did not subsequently adopt a new exposure policy as Commenters suggest. Rather, the Agency simply clarified the existing exposure policy. Further, the 31 of 32 previous cases, noted by the court in *Troy Corp.,* in which the Agency had been consistent with this exposure policy included the listing of hydrogen sulfide. Therefore, EPA had applied this same exposure policy to the listing of hydrogen sulfide, and need not, as Commenters suggest, provide a new notice and opportunity to comment on the use of exposure analyses in listing hydrogen sulfide under section 313 of EPCRA.

As EPA explained in the Intent to Lift the Stay:

EPA has determined that hydrogen sulfide can reasonably be anticipated to cause serious or irreversible chronic human health effects at relatively low doses and thus is considered to have moderately high to high chronic toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be listed for chronic effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61432, 61433, 61440–61442). Hydrogen sulfide has also been determined to cause ecotoxicity at relatively low concentrations, and thus is considered to have high ecotoxicity. EPA believes that

chemicals that induce death or serious adverse effects in aquatic organisms at relatively low concentrations (*i.e.,* they have high ecotoxicity) have the potential to cause significant changes in the population of fish and other aquatic organisms, and can therefore reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. EPA does not believe that it is required to consider exposure for chemicals that have high ecotoxicity based on a hazard assessment when determining if a chemical can be listed for effects pursuant to EPCRA section 313(d)(2)(C) (see 59 FR 61432, 61433, 61440–61442). (75 FR 8889, 8893 (Feb. 26, 2010)).

d. *EPA Must Make a New Listing Determination.* Finally, Commenters argue that EPA cannot now limit comment to whether or not to lift the stay because EPA ''must make a new listing determination before it may lift [the stay].''

This argument merely restates Commenters' first three arguments in support of Commenters' ultimate position that EPA must revisit the 1993 listing decision. For the reasons already discussed above, the Agency disagrees with Commenters' arguments.

2. *Implementation of EPA's Exposure Policy.* Commenters state that EPA may not implement its policy on the use of exposure analysis in EPCRA section 313 listing decisions in an arbitrary manner. Commenters claim that EPA has not identified the specific criteria it utilizes in determining whether a substance causes chronic human health effects at relatively low doses or ecotoxicity at relatively low concentrations. Commenters noted that EPA stated in its intent to lift the Administrative Stay that it is applying the interpretation of the statutory listing criteria and the policy on the use of exposure analyses adopted by the EPA in its November 30, 1994, final rule listing other substances. Commenters cited EPA's statements from the rule that exposure considerations are appropriate in making listing determinations under EPCRA section 313(d)(2)(B) for chemicals with low to moderately low toxicity based on hazard assessment and under EPCRA section 313(d)(2)(C) for chemicals that are low or moderately ecotoxic. Commenters claim that they were unable to identify or locate in the docket for this action any objective criteria that EPA uses in making a determination of whether a substance may cause ''serious or irreversible chronic health effects'' or has ''low to moderately low toxicity.'' Commenters state that they were unable to find any explanation of the criteria that EPA uses in deciding whether a substance has ''low to moderately low ecotoxicity.'' Commenters noted that EPA stated that its interpretation of the statutory listing criteria that supports the 1994 policy statement was sustained during subsequent judicial review.

Commenters state that even if EPA has discretion to select a policy concerning the circumstances in which exposure analysis will be part of the EPCRA section 313(d)(2) listing decision, it does not mean the EPA has unfettered discretion to apply that policy in an arbitrary manner. Commenters state that if EPA is to have a rational policy that can be applied in a fair and equitable manner, the scientists conducting a hazard assessment under EPCRA section 313(d)(2) should not be permitted to make qualitative judgments concerning potential toxicity in the absence of objective criteria or guidance concerning what these terms mean. However, as discussed below, this is precisely the question at issue in *National Oilseed Processors Ass'n.* v. *Browner,* 924 F. Supp. 1193 (D.D.C. 1996), *aff'd in part & remanded in part, Troy Corp.* v. *Browner,* 120 F.3d 277 (D.C. Cir. 1997), where those Courts held that EPA's exposure analysis policy, including the determination of when a toxic chemical has ''moderately high to high toxicity'' based on adverse effects at ''low'' or ''moderate'' dose levels and thus does not require an exposure analysis in order to be listed, was not arbitrary or capricious.

EPA has identified the criteria that it uses in making a determination of whether a substance that may cause ''serious or irreversible chronic health effects'' has ''low to moderately low toxicity,'' and has not applied its policy on the use of exposure analysis in EPCRA section 313 listing determinations in an arbitrary manner. To the contrary, in the preamble to the 1994 chemical expansion final rule, EPA explained that two types of chemicals are considered to exhibit moderately high to high toxicity:

- Where a review of the scientific data provides a high level of confidence that the chemical causes an adverse effect at relatively low dose levels, and
- Where a review of the scientific data indicates that the chemical will cause various adverse effects at moderate dose levels.

(59 FR 61432, 61433 (Nov. 30, 1994).

Thus, EPA has in fact articulated criteria for its determination whether or not exposure considerations will be taken into account in its chemical listing decisions.

More specifically, EPA has provided guidance concerning how it evaluates chemicals to determine whether they meet the EPCRA section 313 listing criteria, including information on the factors EPA considers in determining whether a chemical is sufficiently toxic that exposure need not be considered in the listing decision. The specific criteria EPA uses to determine whether a chemical has moderately high or high toxicity, and thus does not have low to moderately low toxicity, were explained in detail in the 1994 chemical expansion rule:

3. *Hazard evaluation.* After completing the screening phase, EPA conducted a thorough hazard assessment for each of the addition candidates that resulted from the above analyses and determined based on the weight-of-the evidence if there was sufficient evidence to establish that the candidate chemical met the statutory criteria for addition to EPCRA section 313. To make this determination, EPA senior scientists reviewed readily available toxicity information on each chemical for each of the following effect areas: acute human health effects; cancer; other chronic human effects; and environmental effects. In addition, EPA reviewed, where appropriate, information on the environmental fate of the chemical.

The hazard assessment was conducted in accordance with relevant EPA guidelines for each adverse human health or environmental effect (*e.g.,* the appropriate guidelines for hazard evaluation of chemical carcinogens and for the type of evidence required to substantiate a determination of carcinogenicity are the Assessment Guidelines for Carcinogen Risk (Ref. 4)). During this assessment the number, severity, and significance of the effects induced by the chemical, the dose level causing the effect, and the quality and quantity of the available data, including the nature of the data (*e.g.,* human epidemiological, laboratory animal, field or workplace studies) and confidence level in the existing data base, were all considered. *Where a careful review of the scientific data for a particular chemical results in a high level of confidence that the chemical causes an adverse effect at relatively low dose levels, EPA believes that this evidence is sufficient for listing the chemical under section 313. EPA also believes that where a review of the scientific data indicates that the chemical will cause various adverse effects at moderate dose levels, the total weight-of-the-evidence indicates that there is sufficient evidence for listing the chemical under EPCRA section 313. EPA believes that both types of chemicals described above exhibit moderately high to high toxicity based on a hazard assessment.*

EPA also conducted an analysis of exposure for each chemical or chemical category proposed for listing under EPCRA section 313(d)(2)(A) (*i.e.,* based on adverse acute human health effects), and, where appropriate, under section 313(d)(2)(C) (*i.e.,* based on adverse ecological effects). For chemicals listed under EPCRA section 313(d)(2)(A), this analysis included estimated concentrations of the chemical at or beyond

the facility site boundary through the use of estimated releases and modeling techniques. EPA did not conduct an analysis of exposure for the chemicals proposed for listing under section 313(d)(2)(B) because these chemicals exhibit moderately high to high toxicity based on a hazard assessment (see Unit IV.B. for a discussion of the use of exposure). As discussed more thoroughly in Unit IV.B. of this preamble, EPA does not believe that it is appropriate to factor exposure into the listing decisions for the chemicals being listed pursuant to section 313(d)(2)(B) in this rulemaking.

Following a review and analysis of the information available about each chemical in this final rule (including information provided through public comment) by senior Agency scientists, the Agency concludes that for each of the chemicals listed one or more of the EPCRA section 313 listing criteria are met. Moreover, the adverse effects associated with each of the chemicals being listed today are serious and significant. In some cases the effects are extreme, such as cancer or death. In others, the effects are serious and lasting, including, for example, impairment of a fetus' or an offspring's physical development, neurological effects inhibiting motor abilities or mental processes or impairing the ability to reproduce, or the sustainability of a fragile ecosystem such as an estuary. For a number of chemicals in the final rule, there is more than one adverse effect.

It is important to understand that although an adverse effect is known or can be reasonably anticipated to be caused by a chemical on the section 313 list, a release of a chemical into a community does not necessarily mean that the effect will occur. Exposure and dose are also important factors in determining whether an adverse effect occurs and how serious the manifestation will be. The listing of a chemical on the section 313 list does not mean that a particular community will experience these adverse effects. Instead the purpose for listing a chemical is to ensure that the public gets information about releases of such chemicals. Thus, EPA believes that for chemicals that typically do not affect solely one or two species but rather affect changes across a whole ecosystem and for which there is well-documented evidence supporting the adverse effects, that their addition to the EPCRA section 313 list is warranted even though the severity of the adverse effects that they induce will be dependent upon site-specific characteristics. Once EPA makes release data available through TRI, the community may then make its own determination on the importance of these releases (and their potential adverse effects). (59 FR at 61433, 11/30/1994 (emphasis added)).

EPA went on to state in the chemical expansion rule that:

Through this rulemaking, EPA is clarifying its position regarding the use of hazard, exposure, and risk in listing decisions under EPCRA section 313. EPA will consider exposure factors when making determinations under section 313(d)(2)(A) (acute human toxicity). In addition, EPA has discretion to consider exposure factors where appropriate for determinations under sections 313(d)(2)(B) (chronic human toxicity) and (C) (environmental toxicity), and that there is a broader range of circumstances in which exposure will be considered under section 313(d)(2)(C) than under (B).

EPA has reviewed its past listing decisions in light of this clarification, and believes that its prior listing determinations have been consistent in the consideration of exposure in 31 of the 32 listing/delisting determinations previous to this action, including a number of deletions of low toxicity chemicals that Congress placed on the initial EPCRA section 313 list. EPA is currently reviewing the one exception, inorganic fluorides, to determine if additional action is warranted. EPA will continue to evaluate petitions according to this clarification and will delete chemicals that do not meet the statutory criteria. (59 FR at 61442, 11/30/1994).

EPA's exposure analysis policy, as set forth in the chemical expansion Final Rule, was judicially challenged in *National Oilseed Producers Ass'n* v. *Browner,* 924 F. Supp. 1193 (D.D.C. 1996). There, the plaintiffs presented precisely the same argument that the Hydrogen Sulfide Consortium now raises. In *National Oilseed,* the court stated that ''Plaintiffs * * * claim that EPA has not adequately explained when it will consider exposure under Section 313(d)(2)(B).'' *National Oilseed,* 924 F. Supp. at 1203. The court squarely rejected that argument, holding:

The Agency argues generally that, in the exercise of its discretion, it has elected to consider exposure only in limited circumstances. Specifically, when EPA's hazard assessment shows that a chemical exhibits only low or moderately low toxicity, EPA will consider the potential for exposure in making a listing decision. Conversely, where EPA's hazard assessment reveals that a chemical's toxicity is high or moderately high, EPA does not consider exposure, and will list the chemical based solely on its toxic effect.

* * * * *

Moreover, EPA asserts that it explained adequately on the record that it chose to not consider exposure in this rulemaking because all of the chemicals proposed for listing under Section 313(d)(2)(B) were of ''high to moderately-high'' toxicity and therefore consideration of exposure was not appropriate.

After consideration of the extensive arguments on both sides of this issue, the Court concludes that the Agency did not act arbitrarily and capriciously in declining to consider exposure in the listing decisions for this rulemaking. * * * While a more clearly and fully articulated policy would be preferable, the Court cannot conclude that EPA was unreasonable in exercising its discretion by continuing to exclude consideration of exposure when chemicals are of high to moderately-high toxicity.

* * * * *

What is significant is that EPA stated what its policy for consideration of exposure would be, and then described its application to the chemicals considered in this rulemaking.

Because EPA's decision to not consider exposure in this rulemaking was consistent with its policy of using exposure data only in particular circumstances, *i.e.,* where chemicals are of low toxicity, the Court concludes that the Agency was not arbitrary and capricious.

National Oilseed, 924 F. Supp. at 1203–04 (citations and footnotes omitted).

On appeal to the U.S. Court of Appeals for the D.C. Circuit, the plaintiffs again raised this same argument. There, the court stated: ''* * * [Plaintiffs] argue that the EPA abused its discretion and acted arbitrarily and capriciously by failing to establish criteria for the consideration of exposure * * *.'' *Troy Corp.* v. *Browner,* 120 F.3d 277, 282 (D.C. Cir. 1997). On this point, the D.C. Circuit rejected the plaintiffs' argument and affirmed the judgment of the D.C. District Court in *National Oilseed. Troy Corp.,* 120 F.3d at 293.

Just as EPA did in the 1994 chemical expansion rule and other previous listing decisions, upheld by the Courts in *National Oilseed* and *Troy Corp.*—including application of the Agency's exposure analysis policy in conducting such hazard assessments—EPA conducted a hazard assessment of the human health and ecological effects of hydrogen sulfide, upon which the determinations that hydrogen sulfide has moderately high to high human toxicity were based. Based on the data from the hazard assessment, as presented in the **Federal Register** notice and supporting documents, EPA determined that hydrogen sulfide has moderately high to high toxicity to humans and is highly toxic to aquatic organisms. EPA discussed these determinations in detail in the notice of Intent to Lift the Stay in the **Federal Register** (75 FR 8889, 2/26/2010). Human health toxicity was discussed in detail beginning on page 8891, with references, and ecological effects were discussed in detail beginning on page 8893, with references.

In the section of the **Federal Register** document that discussed the rationale for lifting the stay, EPA provided the following summary of the hazard data:

EPA's technical evaluation of hydrogen sulfide shows that it can reasonably be anticipated to cause chronic health effects in humans. The chronic health effects have been observed in laboratory animals at concentrations as low as 28 mg/m^3 (20 ppm) and 41.7 mg/m^3 (30 ppm). In addition, EPA's technical evaluation of hydrogen sulfide also shows that it can reasonably be anticipated

to cause, because of its toxicity, significant adverse effects in aquatic organisms. Examples of hydrogen sulfide's ecological toxicity include acute toxicity (96-hour LC_{50}) values for freshwater fish that ranged from 0.0149 mg/L (fathead minnow) to 0.0448 mg/L (bluegill), indicating high aquatic toxicity. Examples of hydrogen sulfide's chronic ecological toxicity include freshwater fish values that ranged from a 6-week LOEC (growth rate) of 0.0005 mg/L in a tropical fish (Mystus nemurus) to a 430-day LOEC (final weight) of 0.009 mg/L for goldfish, also indicating high aquatic toxicity. (75 FR 8893, 2/26/2010).

As the language above clearly shows, EPA did identify the information and the rationale for why hydrogen sulfide was determined to have moderately high to high human toxicity and high ecotoxicity.

3. *EPA's Rationale for Hydrogen Sulfide's Toxicity Level.* Commenters claim that EPA has not given its rationale for why hydrogen sulfide causes chronic human health effects at relatively low levels and ecotoxicity at relatively low concentrations. Commenters contend that EPA has not provided any rationale for the determinations that no exposure assessment is needed for hydrogen sulfide. Commenters noted that EPA provided a description of the chronic human health effects and ecological toxicity of hydrogen sulfide. Commenters also noted that EPA asserted that it had made the requisite determinations concerning the relative magnitude of the toxicity of hydrogen sulfide for both human health and ecological effects. Commenters contend, however, that EPA's statements are wholly conclusory and that the docket does not appear to contain any explanations of the relation between the hazard assessments prepared by EPA scientists and these determinations. Commenters state that they do not believe that the effect levels cited by EPA will be caused by the releases reportable under EPCRA section 313. Commenters state that they believe that the effect levels cited by EPA as ''relatively low'' are actually very high. Commenters stated that the chronic health effect levels cited by EPA are 2,000 to 3,000 times greater than the odor detection threshold (10 parts per billion (ppb)) for hydrogen sulfide. Commenters claim that while releases may result in ambient hydrogen sulfide concentrations that exceed the odor detection threshold, the concentrations will always be far below the lowest levels for chronic effects in animals cited by EPA. Commenters cited a 1990 EPA study on oil and natural gas extraction and a 1999 Public Health Service study for one city near hydrogen sulfide sources as evidence that hydrogen sulfide levels are low. Commenters also cited established state air standards that range from 83 to 200 ppb noting that these are 100 to 150 times less than the lowest levels EPA cited for chronic effects in animals.

In discussing the data EPA cited as supporting its evaluation that hydrogen sulfide is toxic to aquatic organisms at relatively low concentrations, the commenters stated that while the levels may seem relatively low in the abstract, they believe they are actually quite high when viewed in the context of data that clearly establish that hydrogen sulfide will rapidly oxidize to less toxic chemical forms when released to surface waters. Commenters cited the EPA Water Quality Criteria Gold Book as support for their position:

> The fact that H_2S is oxidized in well-aerated water by natural biological systems to sulfates or is biologically oxidized to elemental sulfur has caused investigators to minimize the toxic effects of H_2S on fish and other aquatic life. (EPA Gold Book, May 1, 1986, page 268 (Ref. 2)).

As discussed in the previous response, EPA has provided guidance on how it determines whether a chemical has moderately high to high human toxicity and high ecotoxicity. In its notice of Intent to Lift the Stay, EPA provided a detailed hazard assessment of both the human health effects and the ecological effects of hydrogen sulfide. This assessment included both the effects caused by hydrogen sulfide and the doses/concentrations that caused those effects. This information was discussed in the **Federal Register** (75 FR 8889, 2/26/2010), and the details were contained in the hazard assessments and other references cited by EPA. Specifically, at 75 FR 8889, 8891–8893 (Feb. 26, 2010), EPA's lengthy and detailed technical review of hydrogen sulfide (Part IV. of the **Federal Register** notice, entitled ''What is EPA's Technical Review of Hydrogen Sulfide?''), including references, can be found (and need not be reiterated here). EPA then concluded, based on the hazard assessment:

> EPA has determined that hydrogen sulfide can reasonably be anticipated to cause serious or irreversible chronic human health effects at relatively low doses and thus is considered to have moderately high to high chronic toxicity * * *. Hydrogen sulfide has also been determined to cause ecotoxicity at relatively low concentrations, and thus is considered to have high ecotoxicity. EPA believes that chemicals that induce death or serious adverse effects in aquatic organisms at relatively low concentrations (*i.e.,* they have high ecotoxicity) have the potential to cause significant changes in the population of fish and other aquatic organisms, and can therefore reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. (75 FR 8893, 2/26/2010).

In the section of the **Federal Register** document that discussed the rationale for lifting the stay, EPA provided the following summary of the hazard data:

> EPA's technical evaluation of hydrogen sulfide shows that it can reasonably be anticipated to cause chronic health effects in humans. The chronic health effects have been observed in laboratory animals at concentrations as low as 28 mg/m^3 (20 ppm) and 41.7 mg/m^3 (30 ppm). In addition, EPA's technical evaluation of hydrogen sulfide also shows that it can reasonably be anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms. Examples of hydrogen sulfide's ecological toxicity include acute toxicity (96-hour LC_{50}) values for freshwater fish that ranged from 0.0149 mg/L (fathead minnow) to 0.0448 mg/L (bluegill), indicating high aquatic toxicity. Examples of hydrogen sulfide's chronic ecological toxicity include freshwater fish values that ranged from a 6-week LOEC (growth rate) of 0.0005 mg/L in a tropical fish (*Mystus nemurus*) to a 430-day LOEC (final weight) of 0.009 mg/L for goldfish, also indicating high aquatic toxicity. (75 FR 8893, 2/26/2010).

The above determinations are based on the human health effects and ecological effects caused by hydrogen sulfide and the doses/concentrations that caused those effects. EPA clearly stated why the hazard assessment supports a finding of moderately high to high human toxicity and high ecotoxicity. Therefore, EPA has clearly stated how the hazard assessment data supports a conclusion that hydrogen sulfide has moderately high to high human toxicity and high ecological toxicity.

Regarding the information that the commenter provided on previous exposure assessments, air standards, etc., none of that information is relevant to a determination that hydrogen sulfide has moderately high to high human toxicity or high ecological toxicity. The toxicity of a chemical is separate from whether there are exposures from facility releases of that chemical or not. In addition, the information provided by the commenter does not demonstrate that releases of hydrogen sulfide could not reach a level of concern from all the types of facilities that report under EPCRA section 313. EPA notes that the examples of the very low air standards for hydrogen sulfide of 83–200 parts per billion support EPA's determination that hydrogen sulfide is highly toxic.

The commenter's statement that the cited toxic effects of hydrogen sulfide are 2,000 to 3,000 times greater than the odor detection threshold for hydrogen

sulfide of 10 ppb is not a basis for discounting the toxic effects of hydrogen sulfide. As EPA has stated:

> Recent reviews of the health hazards associated with H_2S exposure and subsequent treatment include Milby and Baselt (1999a) and Guidotti (1996). Earlier reviews of the health effects were provided by Glass (1990), Reiffenstein *et al.* (1992), and Mehlman (1994). Exposure to H_2S has been reported to be an important cause of morbidity and mortality in the workplace (Snyder *et al.,* 1995) and olfactory dysfunction (Hirsch and Zavala, 1999). These reviews indicate that the typical ''rotten-egg odor'' of H_2S is an inadequate warning indicator of exposure since levels in the range of 100–200 ppm (140–280 mg/m^3) can lead to loss of smell followed by olfactory paralysis (Reiffenstein *et al.,* 1992) (IRIS, 2003, page 10 (Ref. 3)).

In addition, simply because someone can smell hydrogen sulfide does not mean they will automatically remove themselves from that exposure. Individuals that are frequently exposed to hydrogen sulfide may become less sensitive to the smell and, as indicated in the IRIS assessment, it is possible to have loss of smell from hydrogen sulfide exposure.

Commenters further state that:

> EPA bases its evaluation that H_2S is ecotoxic at ''relatively low concentrations'' exclusively on potential effects on aquatic life, noting that toxicity values for aquatic species include ''numerous values that are well below 1 milligram per liter (mg/L).'' While the levels cited by EPA may seem ''relatively low'' in the abstract, they are actually quite high when viewed in the context of data that clearly establish that H_2S will be rapidly oxidized to less toxic chemical forms when released to surface waters. The EPA Water Quality Criteria Gold Book makes a similar observation:
>
> The fact that H_2S is oxidized in well-aerated water by natural biological systems to sulfates or is biologically oxidized to elemental sulfur has caused investigators to minimize the toxic effects of H_2S on fish and other aquatic life.
>
> (Footnotes omitted)

The quote from the water quality criteria document that ''[t]he fact that H_2S is oxidized in well-aerated water by natural biological systems to sulfates or is biologically oxidized to elemental sulfur has caused investigators to minimize the toxic effects of H_2S on fish and other aquatic life'' is from the introductory paragraph of the water quality criteria for hydrogen sulfide. This statement simply explains what has caused some investigators in the past to minimize the toxic effects of hydrogen sulfide. However, in the rationale section, the document goes on to discuss the toxicity of hydrogen sulfide to aquatic life in detail and does not dismiss the potential impacts hydrogen sulfide may have on aquatic life. In fact, the document presents the rationale for setting a water quality criterion of just 2 micrograms per liter (μg/L) undissociated hydrogen sulfide for fish and other aquatic life in both fresh and marine water. Concerning oxidation, the EPA Gold Book states:

> The degree of hazard exhibited by sulfide to aquatic animal life is dependent on the temperature, pH, and dissolved oxygen. At lower pH values a greater proportion is in the form of the toxic undissociated H_2S. In winter when the pH is neutral or below or when dissolved oxygen levels are low but not lethal to fish, the hazard from sulfide is exacerbated. (EPA Gold Book, May 1, 1986, page 268, (Ref. 2)).

The criteria document also states that:

> Many past data on the toxicity of hydrogen sulfide to fish and other aquatic life have been based on extremely short exposure periods. Consequently, these early data have indicated that concentrations between 0.3 and 0.4 mg/L permit fish to survive (Van Horn 1958, Boon and Follie 1967, Theede *et al.,* 1969). Recent long-term data, both in field situations and under controlled laboratory conditions, demonstrate hydrogen sulfide toxicity at lower concentrations. (EPA Gold Book, May 1, 1986, page 268, (Ref. 2)).

and concludes that:

> Available data indicate that water containing concentrations of 2.0 μg/L undissociated H_2S would not be hazardous to most fish and other aquatic wildlife, *but concentrations in excess of 2.0 μg/L would constitute a long-term hazard.''* (EPA Gold Book, May 1, 1986, page 270 (emphasis added) (Ref. 2)).

The conclusion that a concentration of hydrogen sulfide in excess of just 2.0 μg/L would constitute a long-term hazard to aquatic life supports a determination that hydrogen sulfide is clearly highly toxic and a potential hazard to aquatic life despite its fate under certain environmental conditions. If hydrogen sulfide were not highly toxic to fish and other aquatic life, then there would be no need for such a very low water quality criteria value.

Regarding the two references cited by the commenters concerning oxidation of hydrogen sulfide in seawater and aqueous solutions (*i.e.,* Millero, F.J., Hubinger, Fernandez and Garnett (1987). Oxidation of H_2S in Seawater as a Function of Temperature, pH and Ionic Strength. *Env. Sci. Tech.* 21:439–443; Obrien, D.J. and Birkner, F.B. (1977). Kinetics of Oxygenation of Reduced Sulfur Species in Aqueous Solutions. *Env. Sci. Tech.* 11:1114–1120.), the Millero reference was cited in EPA's hazard assessment (page 8) and the Obrien reference was cited in the Millero reference (Ref. 4). EPA is thus familiar with the issue of oxidation of hydrogen sulfide and discussed the topic in its hazard assessment on page 8 and again on page 17 (Ref. 4). However, the fact that hydrogen sulfide can be oxidized under certain environmental conditions does not mean that it is not highly toxic. As was cited above, the EPA Gold Book stated:

> The degree of hazard exhibited by sulfide to aquatic animal life is dependent on the temperature, pH, and dissolved oxygen. At lower pH values a greater proportion is in the form of the toxic undissociated H_2S. In winter when the pH is neutral or below or when dissolved oxygen levels are low but not lethal to fish, the hazard from sulfide is exacerbated. (EPA Gold Book, May 1, 1986, page 268 (Ref. 2)).

If hydrogen sulfide were rapidly oxidized to harmless chemicals under all environmental conditions, then that would have an impact on EPA's assessment, but that is certainly not the case. How much damage a particular release of hydrogen sulfide will cause can depend on a number of factors including the amount of the release, whether the release is continuous or infrequent, the pH of the water, the temperature of the water, the type of water (fresh or seawater), the time of year, velocity of the body of water, etc. These factors would be considered in site-specific exposure and risk assessments. While hydrogen sulfide may be oxidized under certain environmental conditions, there are many common environmental conditions under which oxidation will not be significant and thus will not lessen the impact of a release of hydrogen sulfide. As the aquatic toxicity data shows, hydrogen sulfide is toxic to many different aquatic species and at several stages of life with some toxicity values at or below one part in a billion. Thus, it takes very little hydrogen sulfide to have an impact on aquatic life. Even under favorable oxidation conditions, the experimental half-life of hydrogen sulfide is 50 hours in fresh water and 26 hours in seawater. Considering how low the 48 and 96 hour LC_{50} values are for hydrogen sulfide, hydrogen sulfide toxicity is still a concern even under favorable oxidation conditions. The potential oxidation of hydrogen sulfide does not lessen the inherent toxicity of hydrogen sulfide.

EPA notes that, other than the single quote from the water quality criteria document and two references concerning oxidation of hydrogen sulfide in water, the commenters have not questioned or tried to refute in any way the aquatic toxicity information provided in EPA's hazard assessment. The summary table of the aquatic

toxicity values presented in the hazard assessment provided over 90 toxicity values from more than a dozen sources. The commenters did not provide any specific comments on why those data should not be considered sufficient to support EPA's conclusions.

With regard to the commenters' statements concerning criteria or guidance for determining whether a chemical has moderately high to high human toxicity or high ecological toxicity, it appears that the commenters may have been looking for some type of numerical cutoffs. The comments regarding criteria or guidance for determining whether a chemical has moderately high to high human toxicity or high ecological toxicity have been addressed in EPA's other responses to the commenters. With regard to possible numerical cutoffs, EPA does not agree that numerical cutoffs should be or need to be established in order to determine whether a chemical has moderately high to high human toxicity or high ecological toxicity. As EPA explained in the chemical expansion rule in 1994:

> The hazard assessment was conducted in accordance with relevant EPA guidelines for each adverse human health or environmental effect (*e.g.,* the appropriate guidelines for hazard evaluation of chemical carcinogens and for the type of evidence required to substantiate a determination of carcinogenicity are the Assessment Guidelines for Carcinogen Risk (Ref. 4)). During this assessment the number, severity, and significance of the effects induced by the chemical, the dose level causing the effect, and the quality and quantity of the available data, including the nature of the data (*e.g.,* human epidemiological, laboratory animal, field or workplace studies) and confidence level in the existing data base, were all considered. Where a careful review of the scientific data for a particular chemical results in a high level of confidence that the chemical causes an adverse effect at relatively low dose levels, EPA believes that this evidence is sufficient for listing the chemical under section 313. EPA also believes that where a review of the scientific data indicates that the chemical will cause various adverse effects at moderate dose levels, the total weight-of-the-evidence indicates that there is sufficient evidence for listing the chemical under EPCRA section 313. EPA believes that both types of chemicals described above exhibit moderately high to high toxicity based on a hazard assessment. (59 FR 61433, 11/30/1994).

EPA provided a hazard assessment that presented the information used to support the finding that hydrogen sulfide has moderately high to high human toxicity and high ecotoxicity. As in the 1994 rulemaking, and subsequent rulemakings, the data presented in the hazard assessments addressed issues such as the number, severity, and significance of the effects induced by the chemical, the dose level causing the effect, and the quality and quantity of the available data, including the nature of the data (*e.g.,* human epidemiological, laboratory animal, field or workplace studies) and confidence level in the existing data base. All commenters had the opportunity to comment on whether these data support EPA's determinations regarding the toxicity of hydrogen sulfide in response to EPA's notice of Intent to Lift the Stay of the reporting requirements for hydrogen sulfide. Establishing a numerical cutoff would limit EPA's ability to consider other factors that might increase or decrease the concern for the toxicity of a chemical. For example, if one chemical causes one serious effect at 100 milligrams per kilogram per day (mg/kg/day) and another chemical causes multiple serious effects across multiple organ systems but at 300 mg/kg/day it would not make sense to discount the latter if there were some arbitrary numerical cutoff of 200 mg/kg/day. EPA does not believe that would be the correct way to evaluate chemicals for listing. Rather, EPA considers all of the toxicity data, including the doses/concentrations causing the toxic effects, in making determinations about the toxicity of a chemical. EPA provided this information in the hazard assessment for hydrogen sulfide and provided its rationale for lifting the stay based on this information.

While EPA has not set numerical cutoffs, a quick review of the chemicals included in the 1994 chemical expansion rule (59 FR 61432, 11/30/1994), the persistent, bioaccumulative, and toxic (PBT) chemicals rule (64 FR 693, 1/5/1999), and other actions shows that the doses and concentrations that cause adverse effects for hydrogen sulfide are well within those of chemicals that EPA has previously determined to have moderately high to high human toxicity and high ecotoxicity. In fact, with regard to ecotoxicity, some of the levels at which hydrogen sulfide causes toxicity are among the lowest that EPA has evaluated. Even if EPA were to establish numerical cutoffs, based on EPA's previous listing determinations the levels at which hydrogen sulfide causes toxicity would be well below any such numerical cutoffs.

With regard to the phrase ''relatively low doses,'' this simply refers to doses that are low relative to the body burden they impose. Dose levels are most often measured as (or converted into) the units milligrams per kilogram per day (mg/kg/day) where kilogram refers to each kilogram of body weight. As noted above, EPA has explained that in determining whether a chemical has moderately high to high chronic toxicity the dose levels causing the effects along with the number and severity of the adverse effects are considered (59 FR 61433, 1/30/1994). While EPA has not set a numerical cutoff for a relatively low dose, it has provided numerous examples of the dose levels that EPA considers to be relatively low as well as dose levels that EPA considers to be relatively high. The 1994 chemical expansion rule alone contains over 200 examples of relatively low doses (59 FR 1788, 1/12/1994). Doses in that rule that were considered relatively low were generally at or below 100 mg/kg/day. EPA has also identified, through numerous actions, dose levels that are considered to be high or relatively high. Such dose levels are typically at or above 500 mg/kg/day, with most examples being in excess of 1,000 mg/kg/day or more (see for example: 59 FR 49888, 9/30/1994; 60 FR 46076, 9/5/1995, and 64 FR 8769, 2/23/1999). Even in the rulemaking that added hydrogen sulfide to the TRI list, EPA identified doses of 600 and 1,000 mg/kg/day as ''relatively high doses'' (57 FR 41020, 9/8/1992). These ''relatively high doses'' were cited by EPA in the determinations that b-chloronapthalene and isobutyl alcohol were not sufficiently toxic to be added to the EPCRA section 313 list (57 FR 41033, 9/8/1992). These dose levels are significantly higher than the less than 15 mg/kg/day doses (converted from 20–30 ppm) that EPA has cited as being relatively low for hydrogen sulfide. While EPA has not set a numerical cutoff for relatively low doses, the Agency has provided, through the listing and delisting of chemicals, substantial guidance for this terminology.

As EPA has noted, low dose alone is not the only consideration in determining whether a chemical has moderately high to high toxicity and thus should be listed on hazard alone:

> Where a careful review of the scientific data for a particular chemical results in a high level of confidence that the chemical causes an adverse effect at relatively low dose levels, EPA believes that this evidence is sufficient for listing the chemical under section 313. EPA also believes that where a review of the scientific data indicates that the chemical will cause various adverse effects at moderate dose levels, the total weight-of- the-evidence indicates that there is sufficient evidence for listing the chemical under EPCRA section 313. EPA believes that both types of chemicals described above exhibit moderately high to high toxicity based on a hazard assessment. (59 FR 61433, 1/30/1994).

An example of this concept is the listing of triphenyltin chloride. This chemical was cited by EPA as causing significant reproductive toxicity, including adverse effects on the testes, epididymis, sperm duct, prostate gland, seminal vesicle, Cowper's gland, and accessory glands, at an oral dose of 380 mg/kg over 19 days. While the dose level was more moderate, EPA determined that the severity and number of effects were sufficient for listing (59 FR 1843, 1/12/1994). This is the kind of flexibility regarding dose levels that is required when making determinations about the toxicity of chemicals, and is consistent with the exposure policy EPA has established for EPCRA section 313 determinations.

Regarding the phrase ''relatively low concentrations'' used in the assessment of ecological toxicity, this is similar to the ''relatively low dose'' terminology in that it focuses on concentrations that result in low doses to the organisms. Data for aquatic organisms is the most commonly cited data and typically has the units of milligrams per liter (mg/L). As EPA has stated, exposure assessments are not used to list a chemical for ecological effects if it has high toxicity. Based on concentration, EPA has typically limited its consideration of highly toxic to those chemicals that cause acute effects at about 1 mg/L or less and chronic effects at 0.1 mg/L or less (see for example: 57 FR 41020, 9/8/1992 and 59 FR 1788, 1/12/1994). Since the statutory criteria of EPCRA section 313(d)(2)(C) also includes consideration of persistence and bioaccumulation, EPA has considered somewhat higher concentrations as highly toxic for chemicals with those characteristics (64 FR 696, 1/5/1999). As with chronic human health effects, EPA has not set a numerical cut off for relatively low concentrations, but has provided, through the listing and delisting of chemicals, substantial guidance for this terminology.

EPA notes that other programs within the Agency that have numerical cutoffs for aquatic organisms have set numerical cutoffs that are consistent with the kind of toxicity concentrations that EPA has identified as being highly toxic in EPCRA section 313 evaluations. For example, the Office of Pesticide Programs cites the following:

ECOTOXICITY CATEGORIES FOR TERRESTRIAL AND AQUATIC ORGANISMS

Concentration (ppm)	Toxicity category
Aquatic Organisms: Acute	
< 0.1	very highly toxic.
0.1–1	highly toxic.
>1–10	moderately toxic.
>10–100	slightly toxic.
> 100	practically nontoxic.

(*http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysis_eco.htm#Ecotox*).

Under the above numerical cutoffs, not only would hydrogen sulfide be considered highly toxic, but most of the available data would support a classification of very highly toxic.

4. *Qualitative Judgment on Exposure Levels.* Commenters stated that the lack of any objective rationale for EPA's determination that hydrogen sulfide causes health and ecological effects at relatively low levels suggests that EPA made a qualitative judgment about the magnitude of the potential exposure without preparing any supporting exposure analysis. Commenters restated their position that EPA has not provided any objective criteria for its determination that hydrogen sulfide causes human health effects and ecological effects at relatively low levels. Commenters assert that one possibility is that EPA scientists have simply made a qualitative judgment concerning the plausibility that hydrogen sulfide exposure might occur at the levels in question. Commenters stated that such a judgment would be intrinsically arbitrary when it is possible to do a proper and defensible exposure analysis. Commenters claim that if an exposure analysis were conducted they are confident it would show that exposure levels are below the levels that EPA has identified for human health effects and ecological effects.

As discussed in a previous response to this commenter, EPA has provided the information it used to determine that hydrogen sulfide has moderately high to high human toxicity and high ecotoxicity and has explained the methodology by which EPA makes such determinations. Therefore, EPA disagrees with the commenter's statement that EPA did not provide an objective rationale for its determinations.

Commenter asserts that:

> One possibility is that EPA scientists have simply made a qualitative judgment concerning the plausibility that H_2S exposure might occur at the levels in question. Such a judgment would be intrinsically arbitrary when it is possible to do a proper and defensible exposure analysis.

There is nothing in the materials that EPA has provided that even suggests that EPA made a qualitative judgment about hydrogen sulfide exposure levels. The determination as to whether or not a chemical has moderately high to high human toxicity or high ecotoxicity is separate from any consideration of potential exposures. EPA did not consider or evaluate the potential exposures to hydrogen sulfide in making its finding that hydrogen sulfide has moderately high to high toxicity to humans and is highly toxic to aquatic organisms. The toxicity of a chemical is an intrinsic property of the chemical that is established by determining what exposure level (*i.e.,* dose) causes adverse effects through appropriately conducted toxicological studies; it is not based on releases that occur at facilities. Consideration of the level of exposure from releases occurring at facilities is part of a risk assessment, not a hazard assessment. Unlike the intrinsic toxicity of a chemical, exposure levels can change depending on many factors such as release quantities, type of release, changes in weather patterns, etc. As EPA has stated:

> It is important to understand that although an adverse effect is known or can be reasonably anticipated to be caused by a chemical on the section 313 list, a release of a chemical into a community does not necessarily mean that the effect will occur. Exposure and dose are also important factors in determining whether an adverse effect occurs and how serious the manifestation will be. The listing of a chemical on the section 313 list does not mean that a particular community will experience these adverse effects. Instead the purpose for listing a chemical is to ensure that the public gets information about releases of such chemicals. Thus, EPA believes that for chemicals that typically do not affect solely one or two species but rather affect changes across a whole ecosystem and for which there is well-documented evidence supporting the adverse effects, that their addition to the EPCRA section 313 list is warranted even though the severity of the adverse effects that they induce will be dependent upon site-specific characteristics. Once EPA makes release data available through TRI, the community may then make its own determination on the importance of these releases (and their potential adverse effects). (59 FR 61433, 11/30/1994).

In upholding EPA's interpretation of EPCRA section 313 listing decisions as it relates to the use of exposure, the U.S. Court of Appeals for the District of Columbia itself provided a very good example of the difference between the toxicity of a chemical and exposure to that chemical:

It is not the case that the congressional language mandating listing of a chemical that 'is known to cause or can reasonably be anticipated to cause in humans' the enumerated adverse effects unambiguously incorporates the likelihood of contact between humans and the chemical. A simple analogy quickly refutes NPG's argument that the language is unambiguous. Consider a herpetologist and a student contemplating a reptile imprisoned in a glass cage. The student asks, 'Can that snake's bite reasonably be anticipated to cause death in humans?' The scientist replies, 'Yes.' The scientist is not commenting on the likelihood of the serpent's escape, only the toxicity of its venom. Concededly, his answer could be taken to mean, 'Yes, it is likely that this creature will escape, bite someone, and kill them.' But that is certainly not the unambiguous purport of his words. Even so is the statutory language of Congress. It is conceivable that Congress may have contemplated release in its phrasing of the standard, but that is certainly not unambiguously the case. (*Troy Corp.* v. *Browner,* 120 F.3d 277, 285 (D.C. Cir. 1997)).

The example of a venomous snake in a glass cage provides a perfect illustration of the difference between exposure and toxicity. Just as the containment of the venomous snake in a glass cage does not change the fact that the snake's venom is highly toxic, lack of exposure does not lessen the intrinsic toxicity of a chemical. Lack of exposure addresses the issue of the level of risk, not the level of toxicity.

5. *Use of Best Available Science.* Commenters claim that EPA did not properly consider the best available scientific evidence concerning hydrogen sulfide toxicity and exposure. Commenters cited one clinical study of potential neurological effects of hydrogen sulfide exposure in humans that EPA did not consider. Commenters stated that in the Fieldler *et al.* study (Ref. 5), 74 healthy male and female volunteers participated in a clinical study designed to evaluate neurobehavioral effects of 2-hour controlled chamber exposures to hydrogen sulfide. Commenters state that neurobehavioral effects were evaluated using a battery of established tests immediately prior to, and immediately following, exposure to 0.05, 0.5, and 5.0 ppm hydrogen sulfide in separate sessions approximately one week apart. Commenters state that the sequence of exposures was randomly assigned to each subject and that the investigators reported that no significant changes were found between pre- and post-exposure performance, and that no dose-response was found in any of the neurobehavioral or neurosensory data sets. Commenters contend that although the exposures studied in the Fiedler *et al.* study did not constitute chronic exposure, the study is highly relevant in establishing the levels at which humans might experience neurological effects from hydrogen sulfide exposure. Commenters claim that the neurobehavioral endpoints that were evaluated in this study are likely to be much more effective in capturing subtle neurological impairments that could not be detected in animal studies.

Commenters provided an additional primary literature resource for the evaluation of hydrogen sulfide human health effects. However, the commenters mistakenly reported no significant changes between pre- and post-exposure performance. This is inaccurate as the authors identified significant impairment of verbal learning in all exposure groups ($p \leq 0.0003$). Although the response was not dose dependent, the authors offer several explanations for this finding including a threshold effect for hydrogen sulfide as low as 0.05 ppm.

EPA's **Federal Register** notice of Intent to Lift the Stay of the hydrogen sulfide reporting requirements specifically states that the human health concern for hydrogen sulfide is chronic human health effects (both upper respiratory and neurotoxic effects) (75 FR 8893, February 26, 2010). As the commenters correctly pointed out, the Fiedler *et al.* study ''Sensory and Cognitive Effects of Acute Exposure to Hydrogen Sulfide'' evaluated only acute exposures—not chronic exposures. The study evaluated subjects exposed to hydrogen sulfide for ≤2 hours. Therefore, the study in question is not relevant to the chronic human health effects or the environmental effects that form the basis of EPA's cited concerns for hydrogen sulfide.

While the Fiedler *et al.* study may be relevant in establishing the levels at which humans might experience neurological effects from acute hydrogen sulfide exposure, the Agency does not support the extension to chronic neurological effects. The Fiedler *et al.* study was designed to evaluate cognitive endpoints shown to be responsive in acute studies. As detailed in the **Federal Register** (75 FR 8891, February 26, 2010), hydrogen sulfide neurotoxicity is thought to occur due to hypoxia induced neuronal cell death. This pathology would not be evidenced in the short-term human study conducted by Fiedler *et al.* because the exposures were acute not chronic. Therefore, we would also conclude that the neurobehavioral endpoints that were used in the Fiedler *et al.* study are not, as the commenters suggest, ''likely to be much more effective in capturing subtle neurological impairments that could not be detected in animal studies'' since the effects of chronic exposure would not be observed. The ability to sacrifice animals to study neurotransmitters and brain chemistry provides information that is not available in human studies. These types of studies provide powerful quantitative data, as evidenced in Skrajny *et al.* (Ref. 6).

It should also be noted that the hydrogen sulfide inhalation exposure in the Fiedler *et al.* study ranged from 0.05 to 5.0 ppm. This is far below the lowest observed adverse effect levels (LOAELs) seen in the animal studies of neurotoxicity cited in EPA's notice of Intent to Lift the Stay and support materials. The Fiedler *et al.* study may indicate that hydrogen sulfide can cause adverse effects in humans at exposure levels (at least acute exposure levels) much lower than previously expected.

6. *New Hydrogen Sulfide Dosimetry Data.* Commenters state that EPA has not considered new information on tissue dosimetry in determining the no observed adverse effect levels for chronic inhalation exposure to hydrogen sulfide. Commenters cited two studies that, in combination with the Fiedler *et al.* study, they contend demonstrate that the chronic human health effects are not likely at hydrogen sulfide concentrations of 5 ppm or below. Commenters cited the 2006 Schroeter *et al.* study (Ref. 7), in which the authors used computational fluid dynamics (CFD) modeling to quantitatively correlate hydrogen sulfide tissue dosimetry in rat and human nasal passages. Commenters state that assuming that equivalent hydrogen sulfide flux values will induce similar responses in the olfactory regions of rats and humans, the no observed adverse effect level-human equivalent concentration (NOAEL–HEC) was estimated to be 5 ppm. Commenters also cited a 2010 Schroeter *et al.* study (Ref. 8) in which the authors investigated interhuman variability of hydrogen sulfide nasal dosimetry using anatomically accurate CFD models of the nasal passages of five adults and two children generated from magnetic resonance imaging (MRI) or computed tomography (CT) scan data. Commenters state that using allometrically equivalent breathing rates, the authors simulated steady-state inspiratory airflow and hydrogen sulfide uptake. Approximate locations of olfactory epithelium were mapped in each model to compare air : tissue flux in the olfactory region among individuals. The fraction of total airflow to the olfactory region ranged from 2 percent to 16 percent. Despite this wide range in olfactory airflow, hydrogen sulfide

dosimetry in the olfactory region was predicted to be similar among individuals. Differences in the 99th percentile and average flux values were < 1.2-fold at inhaled concentrations of 1, 5, and 10 ppm. Commenters contend that these preliminary results suggest that differences in nasal anatomy and ventilation among adults and children do not have a significant effect on hydrogen sulfide dosimetry in the olfactory region.

The Agency would like to thank the commenters for bringing additional primary research studies to our attention, enabling us to make decisions using all available resources. EPA agrees with the commenters in regard to consideration of the dosimetry information presented in both papers by Schroeter *et al.* This type of pharmacokinetic modeling and the results presented represent the current state-of-the-science for inhalation dosimetry and are being reviewed by EPA for its utility in addressing our current reference concentration (RfC) derivation methods (see *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=212131*). However, it is important to note that the purpose of the papers by Schroeter *et al.* was to provide a model-based NOAEL–HEC (5 ppm), not an alternative final RfC which incorporates the application of uncertainty factors. Thus, the only part of the EPA's methods in deriving a value that is addressed is the calculation of an HEC extrapolated from animal data. No judgment is made by these authors that 5 ppm represents a replacement or alternative RfC or serves to replace or reduce the application of uncertainty factors. EPA's human health hazard assessment for hydrogen sulfide is based on the Agency's current IRIS toxicological profile (Ref. 3), and while this new dosimetry information and resulting NOAEL–HEC might be considered in a revaluation of the current RfC, it does not impact EPA's assessment of the potential for hydrogen sulfide to cause chronic toxicity.

The Agency does not concur with the commenter's conclusion that the Fiedler and Shroeter studies demonstrate that chronic human health effects are not likely at hydrogen sulfide concentrations of 5 ppm or below. As noted, the Fiedler study addresses solely acute exposures and is not relevant to chronic effects. Further, the Schroeter reports only provide data for use in calculating the NOEAL–HEC based on pharmacokinetic modeling. Therefore, the commenter's conclusions regarding chronic human health effects of hydrogen sulfide are not supported by the studies presented.

7. *No Need for TRI Reporting.* Commenters contend that there is no need to include hydrogen sulfide on the Toxics Release Inventory. Commenters restated their claim that emissions of hydrogen sulfide reported under EPCRA section 313 cannot be reasonably anticipated to cause any of the chronic health effects covered by EPCRA section 313(d)(2)(B). Commenters state that although accidental releases of hydrogen sulfide can result in serious adverse effects, such releases are subject to the emergency notification requirements of EPCRA section 304 and by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103. Commenters state that such accidental releases are expressly regulated pursuant to Clean Air Act (CAA) Section 112(r) and hydrogen sulfide is among the substances that were specifically identified for such regulation by Congress in Section 112(r). Commenters also claim that since there is no evidence that suggests that routine releases of hydrogen sulfide pose any risk, nothing would be achieved by adding reporting requirements under EPCRA section 313. Commenters contend that since emissions of hydrogen sulfide that would typically be reported under EPCRA Section 313 are irrelevant to potential chronic health effects of the type addressed by EPCRA Section 313(d)(2)(B), and accidental releases of hydrogen sulfide that might be expected to present a potential hazard are well regulated, reporting under EPCRA Section 313 serves no purpose. Commenters claim that even if EPA has properly determined that hydrogen sulfide has ''moderately high to high chronic toxicity,'' EPA is not required to list hydrogen sulfide in these circumstances.

Commenters state that in announcing its policy concerning use of exposure analyses in listing determinations under EPCRA Section 313(d)(2), EPA stated:

> The statute is silent on the issue of exposure considerations for the section 313(d)(2)(B) and (C) criteria. The language of section 313 does not prohibit EPA from considering exposure factors when making a finding under either section 313(d)(2)(B) or section 313(d)(2)(C) (59 FR 61441–61442).

Commenters state that the reviewing court that reviewed this construction expressly affirmed this conclusion, stating that ''chemicals of moderate or high toxicity are not necessarily added [to the list] because of it.'' *Troy Corp.* v. *Browner,* 120 F.3d at 287.

Commenters claim that EPA has not cited any adverse consequence from the Administrative Stay of reporting requirements under EPCRA Section 313 that has been in place for over 15 years and that EPA should exercise its discretion to consider exposure factors in making a new listing determination for hydrogen sulfide and then rescind its prior listing determination.

As EPA stated in response to the commenter's previous comments on the releases of hydrogen sulfide, EPA does not agree that the commenters have shown that releases of hydrogen sulfide will not cause the kinds of health and environmental effects that EPA cited as support for listing hydrogen sulfide. Most importantly, EPA is not required to show that the effects that hydrogen sulfide can cause are actually occurring in order to list it on EPCRA section 313. EPA notes that other commenters have provided comments alleging that they have experienced adverse health effects from hydrogen sulfide releases (see for example: EPA–HQ–TRI–2009–0844–0076, EPA–HQ–TRI–2009–0844–0081 in the docket for this action).

Regarding the fact that accidental releases of hydrogen sulfide that may cause serious adverse health effects including death are covered by other statutes, this has no impact on the listing of a chemical under EPCRA section 313. Listing of a chemical under EPCRA section 313 is separate and apart from any other regulatory actions. EPCRA section 313 is focused on a community's right-to-know about releases of toxic chemicals, not emergency reporting requirements for industrial accidents.

With regard to the commenter's statements that listing hydrogen sulfide on EPCRA section 313 serves no purpose, the Agency disagrees. As EPA has stated:

> It is important to understand that although an adverse effect is known or can be reasonably anticipated to be caused by a chemical on the section 313 list, a release of a chemical into a community does not necessarily mean that the effect will occur. Exposure and dose are also important factors in determining whether an adverse effect occurs and how serious the manifestation will be. *The listing of a chemical on the section 313 list does not mean that a particular community will experience these adverse effects. Instead the purpose for listing a chemical is to ensure that the public gets information about releases of such chemicals.* Thus, EPA believes that for chemicals that typically do not affect solely one or two species but rather affect changes across a whole ecosystem and for which there is well-documented evidence supporting the adverse effects, that their addition to the EPCRA section 313 list is warranted even though the severity of the adverse effects that they induce will be dependent upon site-specific characteristics. *Once EPA makes release data available through TRI, the community may then make*

its own determination on the importance of these releases (and their potential adverse effects). (59 FR 61433, 11/30/1994 (emphasis added)).

Listing a chemical under EPCRA section 313 allows the public and governments to track and assess the impacts of chemical releases and make determinations as to whether or not a risk exists. Without release data, the public is limited in its ability to determine whether or not releases of a toxic chemical are impacting their health and/or environment. Even if releases are low and no adverse impacts are expected, that information is still of value to the public.

The listing of hydrogen sulfide on EPCRA section 313 is consistent with EPA's stated policy on the use of exposure assessments, which does not include the use of exposure for chemicals such as hydrogen sulfide that have moderately high to high human toxicity and high ecotoxicity. The commenter suggests that EPA should exercise its discretion with regard to the consideration of exposure, citing *Troy Corp* v. *Browner* for the proposition that ''chemicals of moderate or high toxicity are not necessarily added [to the list] because of it.'' Placed in greater context, that quotation is as follows:

> The EPA's exposure policy merely informed the public that the agency would exercise its discretion by considering exposure only for low toxicity chemicals. The EPA did not thereby curtail this discretion; it did nothing more than clarify its own position. The policy does not impose rights or obligations or bind the agency to a particular result. Chemicals of low toxicity may be added despite the policy, just as chemicals of moderate or high toxicity are not necessarily added because of it. (*Troy Corp.* v. *Browner,* 120 F.3d at 287).

As the DC Circuit noted, EPA stated that it would exercise its discretion by considering exposure only for low toxicity chemicals. If EPA were to consider exposure for hydrogen sulfide it would be inconsistent with the Agency's stated policy on the use of exposure assessments in EPCRA section 313 listing decisions. While EPA does have discretion to deviate from its policy, the Agency does not believe that there is any reason to consider exposure in its listing decision for hydrogen sulfide and thus has no reason to deviate from its stated exposure policy.

B. Comments From the National Renderers Association

The commenter stated that they do not support listing hydrogen sulfide emissions from rendering plants under EPCRA section 313 because of what they claim are extremely low levels of hydrogen sulfide potentially emitted from such facilities. The commenter stated that they agreed with EPA that, at certain concentration levels, exposure to hydrogen sulfide can cause significant adverse acute and chronic human health effects and adverse impacts to the environment. The commenters contend that these potentially harmful concentrations are well understood, published, and regulated under the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) standards with which their facilities comply. The commenter stated that there are safe levels of hydrogen sulfide exposure and that the fence-line concentration of hydrogen sulfide at a typical rendering plant would be expected to be well below these safe levels. The commenter recommended that EPA take into account the ''concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases,'' as required under EPCRA section 313(d)(2)(A), and exempt the reporting of hydrogen sulfide as a by-product of rendering operations.

The commenter provided information on the natural sources of hydrogen sulfide and information that hydrogen sulfide degrades rapidly in the environment. The commenter stated that the typical rendering plant might emit roughly 400 pounds of hydrogen sulfide per year. The commenter stated that hydrogen sulfide can be found in very low concentrations throughout the rendering industry supply and processing chain as a by-product related to the recycling, collecting, handling and processing of animal byproduct and used cooking oil. The commenter claims that hydrogen sulfide releases in the rendering facility workplace environment tend to be fugitive in nature, inconsistent in concentration, and irregularly present. The commenter stated that the presence of hydrogen sulfide, if any, depends on the age of the raw materials, moisture content, temperature, state of anaerobic bacterial decay, and other factors. The commenter claimed that ''[h]ydrogen sulfide concentration emissions from a typical rendering plant likely result in air concentrations off-site that would be several orders of magnitude below concentrations that are potentially hazardous to human health and the environment.'' The commenter claims that as a result of these characteristics, the hydrogen sulfide that may be present in a rendering facility is not likely to reach site boundaries at any measurable or reliably quantifiable concentration. The commenters claim that through their years of studying potential hydrogen sulfide emissions in rendering operations, they know that it is difficult to quantify and report the low levels of emissions that may occur at their facilities. The commenter suggested that the addition of hydrogen sulfide to TRI listing must, at a minimum, allow for no TRI requirements for de minimums sources such as facilities in the rendering supply and processing chain.

As EPA discussed in the Notice of Intent to Lift the Stay (75 FR 8893, 8889, February 26, 2010), exposure consideration is not appropriate for chemicals that have moderately high to high chronic human health toxicity or high environmental toxicity. Hydrogen sulfide meets both of these criteria, therefore exposure (or the potential for exposure) is not a factor in the listing decision. Regarding EPCRA section 313(d)(2)(A), hydrogen sulfide is not listed under that criteria, but rather the criteria of EPCRA sections 313(d)(2)(B) and (C).

It is well known that hydrogen sulfide is a byproduct of the rendering process (Ref. 9). EPA has published emission factors for at least one stage of the rendering process (Ref. 10). The commenter believes that reporting would be difficult for hydrogen sulfide, yet they provide an estimate of 400 pounds of releases per year, thus it appears that these facilities could make at least a reasonable estimate of releases as required under EPCRA section 313. EPA notes that rendering plants must already report their release of ammonia, another gas with variations in production and release. Regarding whether or not ''emissions from a typical rendering plant likely result in air concentrations off-site that would be several orders of magnitude below concentrations that are potentially hazardous to human health and the environment,'' unless the release data is made available the local communities and governments will not be able to confirm this conclusion. EPCRA section 313 contains no provisions for de minimis sources other than the fact that facilities must exceed the reporting thresholds (25,000 pounds for manufacture and processing and 10,000 pounds for otherwise use). It appears that rendering plants do not use hydrogen sulfide, thus they would have to manufacture or process 25,000 pounds before they would have to file a report.

C. Comments From the American Meat Institute

The commenters stated that they agree with the comments submitted by the National Renderers Association. The commenter stated that in their members' plants hydrogen sulfide is released primarily in rendering and waste treatment processes and that the releases are fugitive, can be widespread and are in concentrations that are irregular and inconsistent. The commenter stated that to comply with EPCRA Section 313, their members will have to estimate their releases to determine if the reporting thresholds are met. The commenter claimed that because of the ephemeral nature of the releases, standard field and even more sophisticated laboratory grade measurement devices are inadequate and unreliable. The commenter claimed that the releases disperse rapidly, resulting in concentrations below the measurement capability of some devices and, regardless of the measurement device, the measurements are not easily replicated. The commenter stated that meat packing and processing plants do not have a reliable method for determining compliance. The commenter stated that because of this they have significant concerns regarding how to implement EPCRA section 313 with respect to hydrogen sulfide and contend EPA should consider such practical issues before lifting the stay.

EPA notes that the ability of any one particular industry to be able to report releases is not a factor in determining whether a chemical meets the EPCRA section 313 listing criteria. It is well known that hydrogen sulfide is a byproduct of the rendering process (Ref. 9). EPA has published emission factors for at least one stage of the rendering process (Ref. 10). The commenter believes that reporting would be difficult for hydrogen sulfide, yet the National Renderers Association provided an estimate of 400 pounds of releases per year, thus it appears that these facilities could make at least a reasonable estimate of releases as required under EPCRA section 313. EPA notes that rendering plants as well as meat packing and processing plants must already report their release of ammonia, another gas that is also likely to have variations in production and release as it is also produced from the decay of organic matter. While EPA would like to collect the most accurate information possible, EPCRA section 313 only requires that facilities report a reasonable estimate of releases. EPA sees no reason why meat packing and processing plants should not be able to make at least reasonable estimates of the amounts of hydrogen sulfide manufactured and released.

VI. What are the references cited in this document?

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2009–0844. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. USEPA, OEI. Response to Comments Received on the February 26, 2010, **Federal Register** Document (75 FR 8889): Hydrogen Sulfide; Community Right-to-Know Toxic Chemical Release Reporting; Intent to consider lifting the administrative stay; opportunity for public comment. U.S. Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access. July 21, 2011.
2. USEPA, Office of Water Regulations and Standards, Quality Criteria for Water, EPA 440/5–86–001 (May 1, 1986) (EPA Gold Book), page 268.
3. U.S. Environmental Protection Agency. ''Toxicological Review of Hydrogen sulfide, (CAS No. 7783–06–4), In Support of Summary Information on the Integrated Risk Information System.'' Washington, DC: Integrated Risk Information System. U.S. Environmental Protection Agency. June, 2003. *http://www.epa.gov/ncea/iris/toxreviews/0061-tr.pdf.* Integrated Risk Information Summary for Hydrogen Sulfide available at: *http://www.epa.gov/ncea/iris/subst/0061.htm.*
4. U.S. Environmental Protection Agency, Technical Review of Hydrogen Sulfide: Chemistry, Environmental Fate and Ecological Toxicity, CAS Registry Number 7783–06–4; Office of Environmental Information, Office of Information Access and Analysis, Environmental Analysis Division, Analytical Support Branch; June 22, 2009.
5. Fiedler N., Kipen H., Ohman-Strickland P., Zhang J., Weisel C., Laumbach R., Kelly-McNeil K., Olejeme K., and Lioy P., ''Sensory and Cognitive Effects of Acute Exposure to Hydrogen Sulfide.'' *Env. Health Persp.* v. 116(1), (2008), pp. 78–85.
6. Skrajny, B., Hannah, R.S., Roth, S.H., ''Low concentrations of hydrogen sulphide alter monoamine levels in the developing rat central nervous system.'' *Can. J. Physiol. Pharmacol.* v. 70(11), (1992), pp. 1515–1518.
7. Schroeter J.D., Kimbell J.S., Andersen M.E., and Dorman D.C., ''Use of a pharmacokinetic-driven computational fluid dynamics model to predict nasal extraction of hydrogen sulfide in rats and humans.'' *Toxicol. Sci.* v. 94(2), (2006), pp. 359–367.
8. Schroeter J.D., Garcia G.J. M., and Kimbell, J.S., ''A computational fluid dynamics approach to assess interhuman variability in hydrogen sulfide nasal dosimetry.'' *Inhalation Toxicol.* v. 22(4), (2010), pp. 277–286.
9. Emission Factor Documentation for AP–42 Section 9.5.3 Meat Rendering Plants Final Report. Prepared by Midwest Research Institute (MRI) for the Office of Air Quality Planning and Standards (OAQPS), U. S. Environmental Protection Agency (EPA), under EPA Contract No. 68–D2–0159. September 1995.
10. AP 42, Fifth Edition, January 1995. Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources. Chapter 9: Food and Agricultural Industries section 9.5.3 Meat Rendering Plants. Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. Environmental Protection Agency (EPA).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 8, 2011.

Lisa P. Jackson,

Administrator.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

■ 2. Section 372.65 is amended by lifting the stay on hydrogen sulfide and methyl mercaptan entries and all related dates under paragraph (a) and under paragraph (b), lifting the stay on the entries for CAS Nos. 74–93–1 and 7783–06–04 and all related dates.

[FR Doc. 2011–23534 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 76, No. 200
Monday, October 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1128; Directorate Identifier 2011–CE–031–AD]

RIN 2120–AA64

Airworthiness Directives; CPAC, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all CPAC, Inc. (type certificate formerly held by Commander Aircraft Corporation, Gulfstream Aerospace Corporation, and Rockwell International) Models 112, 112B, 112TC, 112TCA, 114, 114A, 114B, and 114TC airplanes. The existing AD currently requires a one-time inspection of the elevator spar for cracks and, if any crack is found, either replace with a serviceable elevator spar that is found free of cracks or repair/modify the elevator spar with an FAA-approved method. That AD also requires reporting to the FAA the results of the inspection. Since we issued that AD, using the data collected through the reporting requirement, we have determined there is a need for continued inspections. This proposed AD would require repetitive inspections of the elevator spar for cracks and, if any crack is found, either replace with a serviceable elevator spar that is free of any cracks and/or corrosion or repair/modify the elevator spar with an FAA-approved procedure. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 1, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Senior Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4155; fax: (316) 946–4107; e-mail: *t.n.baktha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1128; Directorate Identifier 2011–CE–031–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 28, 2011, we issued AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), for all CPAC, Inc. (type certificate formerly held by Commander Aircraft Corporation, Gulfstream Aerospace Corporation, and Rockwell International) Models 112, 112B, 112TC, 112TCA, 114, 114A, 114B, and 114TC airplanes. That AD requires a one-time inspection of the elevator spar for cracks and, if any crack is found, either replace with a serviceable elevator spar that is found free of cracks or repair/modify the elevator spar with an FAA-approved method. That AD also requires reporting to the FAA the results of the inspection. That AD was prompted by reports of a total of nine elevator spar cracks across seven of the affected airplanes, including a crack of 2.35 inches just below the outboard hinge of the right-hand elevator. We issued that AD to prevent structural failure of the elevator spar due to such cracking, which could result in separation of the elevator from the airplane with consequent loss of control.

Actions Since Existing AD Was Issued

We considered AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), an interim action while we evaluated the data submitted from the reports of the one-time inspection to determine if repetitive inspections are necessary and if a terminating action could be implemented.

Since we issued AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), using the data collected through the reporting requirement, we have determined that there is a need for continued repetitive inspections.

The data indicated that approximately 25 percent of the airplanes inspected have cracked elevator spars, with Model 114 airplanes indicating almost 46 percent of the airplanes having cracks. There does not appear to be a clear correlation between the discovery of a crack and hours time-in-service (TIS) on the airplane.

Therefore, the data indicate that cracks are very prevalent and could appear on any airplane regardless of the hours TIS. Thus, we were unable to determine terminating action to address the unsafe condition. The continued repetitive inspections will help us understand the root cause of the

cracking and develop a terminating action.

Relevant Service Information

We have included in this proposed AD procedures for removing the elevator and inspecting the forward and aft sides of the right-hand and left-hand elevator spar web at and around the elevator outboard hinge bracket area.

We have approved an alternative method of compliance (AMOC) to AD 2011–07–13 that offers an alternative method of inspection. You may find this AMOC at regulations.gov, Docket No. FAA–2011–0302 and Docket No. FAA–2011–1128.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), and make the one-time inspection repetitive.

Interim Action

We consider this proposed AD interim action. We continue to evaluate the reported data and repair procedures to determine a possible terminating action. Based on this determination, we may initiate further rulemaking action if needed to address the unsafe condition identified in this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 773 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the elevator spar	8 work-hours × $85 per hour = $680	N/A	$680	$525,640

Currently, there is no FAA-approved repair/modification for a cracked elevator spar. Further flight is prohibited until the repair/modification is submitted to the FAA and FAA-approved. Therefore, at this time, the FAA has no way of determining the costs associated with the repair/modification of cracks found in the elevator spar.

We estimate the following costs to do any replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost per elevator spar	Parts cost per elevator spar	Cost per product per elevator spar
Replace cracked elevator spar with a serviceable elevator spar.	Up to 16 work-hours × $85 per hour = $1,360	May range from $100 to $1,000.	May range from $1,460 to $2,360.
Replace cracked elevator spar with a new elevator spar.	Up to 16 work-hours × $85 per hour = $1,360	$1,250	$2,610.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), and adding the following new AD:

CPAC, Inc. (Type Certificate Formerly Held by Commander Aircraft Corporation,

Gulfstream Aerospace Corporation, and Rockwell International): Docket No. FAA–2011–1128; Directorate Identifier 2011–CE–031–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 1, 2011.

(b) Affected ADs

This AD supersedes AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011).

(c) Applicability

This AD applies to CPAC, Inc. (type certificate formerly held by Commander Aircraft Corporation, Gulfstream Aerospace Corporation, and Rockwell International) Models 112, 112B, 112TC, 112TCA, 114, 114A, 114B, and 114TC airplanes, all serial numbers, certificated in any category. Type Certificate No. A12SO does not include Models 112A and 115. The Model 112A is a Rockwell ''marketing name'' for the Model 112. The Model 115 is a Rockwell ''marketing name'' for the Model 114. Since they are type-certificated as Model 112 and Model 114, this AD is applicable to the Models 112A and 115.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of a total of nine elevator spar cracks across seven of the affected airplanes, including a crack of 2.35 inches just below the outboard hinge of the right-hand elevator. We are issuing this AD to prevent structural failure of the elevator spar due to such cracking, which could result in separation of the elevator from the airplane with consequent loss of control.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection Requirement Retained From AD 2011–07–13, Amendment 39–16650 (76 FR 18376, April 4, 2011)

Within the next 5 hours time-in-service (TIS) after April 4, 2011 (the effective date retained from AD 2011–07–13), visually inspect the left-hand (LH) and right-hand (RH) elevator spar behind and around the outboard hinge bracket on the elevator spar for cracks. Do the inspection following the procedures specified in paragraph (j) of this AD or by FAA-approved procedures for the inspection in an alternative method of compliance (AMOC) to AD 2011–07–13. You may find this AMOC at regulations.gov, Docket No. FAA–2011–0302 and Docket No. FAA–2011–1128. If cracks are found during this inspection, take the necessary corrective actions specified in paragraph (k) of this AD.

(h) Reporting Requirement Retained From AD 2011–07–13, Amendment 39–16650 (76 FR 18376, April 4, 2011)

Report the results of the inspection required in paragraph (g) of this AD to the FAA, Wichita Aircraft Certification Office (ACO), Attn: T.N. Baktha, Senior Aerospace Engineer, 1801 Airport Road, Room 100; Wichita, Kansas 67209; phone: (316) 946–4155; fax: (316) 946–4107; e-mail: *t.n.baktha@faa.gov.* Include the following information:

(1) Airplane model and serial number.

(2) Hours TIS at time of inspection.

(3) Annotate any cracking found, including the exact location and length of any cracks.

(4) Any installations, repairs, modifications, etc. that have been done on your airplane in the elevator spar area or that could have affected the elevator spar.

(5) Type of operation primarily flown in.

(i) Repetitive Inspection Requirement

As a result of the inspection required in AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), or the inspection required in paragraph (g) of this AD, if the elevator spar was:

(1) *Replaced with a new elevator spar,* within the next 300 hours TIS after the replacement visually inspect the elevator spar behind the outboard hinge bracket and surrounding area for cracks. Repetitively inspect thereafter at intervals not to exceed 12 months or 150 hours TIS, whichever occurs first. Do the inspection following the procedures specified in paragraph (j) of this AD or by FAA-approved procedures for the inspection in an AMOC to AD 2011–07–13. You may find this AMOC at regulations.gov, Docket No. FAA–2011–0302 and Docket No. FAA–2011–1128.

(2) *Replaced with a serviceable elevator spar (one that was in service before and had no cracks and/or corrosion),* within the next 150 hours TIS after the replacement, visually inspect the elevator spar behind the outboard hinge bracket and surrounding area for cracks. Repetitively inspect thereafter at intervals not to exceed 12 months or 150 hours TIS, whichever occurs first. Do the inspection following the procedures specified in paragraph (j) of this AD or by FAA-approved procedures for the inspection in an AMOC to AD 2011–07–13. You may find this AMOC at regulations.gov, Docket No. FAA–2011–0302 and Docket No. FAA–2011–1128.

(3) *Found free of cracks,* within the next 150 hours TIS after the inspection, visually inspect the elevator spar behind the outboard hinge bracket and surrounding area for cracks. Repetitively inspect thereafter at intervals not to exceed 12 months or 150 hours TIS, whichever occurs first. Do the inspection following the procedures specified in paragraph (j) of this AD or by FAA-approved procedures for the inspection in an AMOC to AD 2011–07–13. You may find this AMOC at regulations.gov, Docket No. FAA–2011–0302 and Docket No. FAA–2011–1128.

(j) Inspection Procedures

(1) Disconnect the elevator trim pushrod at the trim tab.

(2) Remove the hinge bolts at the horizontal stabilizer points.

(3) Remove six screws and two bolts at the inboard end of the elevator and remove the elevator.

(4) Remove all fasteners common to the elevator outboard aft end rib, part number (P/N) 44330, and elevator skin, P/N 44323.

(5) Remove the remaining two fasteners common to the elevator outboard aft end rib (P/N 44330) and the elevator spar, P/N 44211.

(6) Remove the elevator aft end rib, P/N 44330, to gain access to the aft side of the elevator spar.

(7) Remove the four bolts, washers, and nuts that secure the outboard elevator hinge bracket, P/N 44285.

(8) Remove elevator hinge bracket, P/N 44285, from the elevator spar.

(9) Clean in and around the location of the elevator outboard hinge bracket, outboard elevator hinge, and the outboard elevator hinge bracket (as applicable) on the elevator spar and visually inspect for cracks. Use a 10X magnifier to facilitate the detection of any crack.

(k) Corrective Actions

(1) If cracks are found during any inspection required in paragraphs (g), (i)(1), (i)(2), or (i)(3) of this AD, before further flight, either replace the elevator spar with a new spar or a serviceable spar that is found free of cracks and/or corrosion or repair/modify the elevator spar following a procedure approved for this AD by the FAA, Wichita ACO. After taking corrective action, continue with the repetitive inspections required in paragraphs (i)(1), (i)(2), or (i)(3);

(2) Reassemble the elevator assembly, rebalance the elevator, and reinstall on the airplane following standard repair practices. Ensure elevator rigging is within tolerance, and that the system operates with ease, smoothness, and positiveness appropriate to its function; and

(3) After taking corrective action, continue with the repetitive inspections required in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(l) Special Flight Permit

Special flight permits are permitted with the following limitations when cracks are found in the elevator spar: daytime visual flight rules (VFR) only, restricted to crew, calm weather, reduced speed not to exceed 111 knots calibrated air speed (KCAS), and not to exceed 5 flight hours.

(m) Paperwork Reduction Act Burden Statement

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

20591, Attn: Information Collection Clearance Officer, AES–200.

(n) AMOCs

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

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

(3) AMOCs approved previously in accordance with AD 2011–07–13, amendment 39–16650 (76 FR 18376, April 4, 2011), are approved as AMOCs for the corresponding requirements in paragraph (j) of this AD.

(o) Related Information

For more information about this AD, contact T.N. Baktha, Senior Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4186; fax: (316) 946–4107; e-mail: *t.n.baktha@faa.gov.*

Issued in Kansas City, Missouri, on October 11, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26806 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1023; Airspace Docket No. 11–AWP–15]

Proposed Amendment of Class E Airspace; Show Low, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Show Low Regional Airport, Show Low, AZ. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Show Low Regional Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 1, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1023; Airspace Docket No. 11–AWP–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1023 and Airspace Docket No. 11–AWP–15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1023 and Airspace Docket No. 11–AWP–15''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace at Show Low Regional Airport, Show Low, AZ. A minor adjustment to the boundary approach would be made for the airspace extending upward from 1,200 feet above the surface to further accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Show Low Regional Airport. This action would enhance the safety and management of IFR operations at the airport.

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 designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for 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 the 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 Show Low Regional Airport, Show Low, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 Show Low, AZ [Modified]

Show Low Regional Airport, AZ
(Lat. 34°15′56″ N., long. 110°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Show Low Regional Airport and within 3 miles each side of the 038° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 10 miles northeast of the airport, and within 2.1 miles each side of the 085° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 7.9 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 34°35′00″ N., long. 109°51′00″ W.; to lat. 34°14′00″ N., long. 109°22′00″ W.; to lat. 33°49′00″ N., long. 110°36′00″ W.; to lat. 34°08′00″ N., long. 110°45′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on October 6, 2011.

John Warner,

Manager, Operations Support Group,Western Service Center

[FR Doc. 2011–26753 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[Docket No. CPSC–2011–0048]

Petition Requesting Non-See-Through Packaging for Torch Fuel and Lamp Oil

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Comment request.

SUMMARY: The U.S. Consumer Product Safety Commission (''Commission'' or ''we'') has received a petition (PP 11–1) requesting that the Commission initiate rulemaking to require special packaging for torch fuel and lamp oil to make it impossible to see the product when it is in the container. We are announcing a reopening of the comment period for 30 days.

DATES: The Office of the Secretary must receive comments on the petition by November 16, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0048, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of theSecretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 2011 (76 FR 44506), we published a notice, stating that the Commission had received a submission from John L. Branum, Attorney at Law, on behalf of Bettsy Bumpas (''petitioner''), dated May 9, 2011, requesting that we initiate rulemaking to require torch fuel and lamp oil to be packaged in containers that are not see-through. The notice explained that we were docketing the request as a petition under the Poison Prevention Packaging Act (''PPPA''). 15 U.S.C. 1471–1477.

The PPPA authorizes the Commission to issue requirements that certain household substances must be sold in child-resistant containers. 15 U.S.C. 1471–1477. Child-resistant packaging requirements currently apply to torch fuel and lamp oil. (More specifically, the child-resistant packaging requirements apply to ''kindling and/or illuminating preparations,'' which includes ''cigarette lighter fuel, charcoal lighter fuel, camping equipment fuel, torch fuel, and fuel for decorative and functional lanterns, which contain 10 percent or more by weight of petroleum distillates and have a viscosity of less than 100 Saybolt universal seconds at 100[deg] Fahrenheit.'' 16 CFR 1700.14(7)). The PPPA does not authorize the Commission to prescribe specific packaging designs for household substances. 15 U.S.C. 1472(d). However, in the case of a

household substance for which special packaging (*i.e.,* child-resistant packaging), is required, the Commission may prohibit the packaging of such substance in packages that it determines are unnecessarily attractive to children. *Id.* Therefore, in order to issuea rule requiring that torch fuel and lamp oil not be sold in see-through containers, the Commission would need to determine that the packaging is ''unnecessarily attractive'' to children.

The petitioner asserts that certain petroleum distillates, including torch fuel and lamp oil, as currently packaged, resemble juice. The petitioner notes that because young children enjoy the taste of juice and are accustomed to drinking it regularly, packaging petroleum distillates in clear plastic bottles causes needless danger, as children may mistake it for juice.

The petitioner states that ''the New Jersey Poison Information and Education System stated in June 2008 that four people were hospitalized, one was critically ill, and one killed due to torch oil being mistaken for apple juice.'' The petitioner also states that ''from 2002 through 2009 the Annual Report of the American Association of Poison Control Centers' National Data System has chronicled the exposure of many young children to lamp oils, which includes torch fuels.'' The petitioner's son died after ingesting torch fuel from a clear plastic bottle.

While torch fuel and lamp oil already are subject to child-resistant packaging and labeling requirements under the PPPA and the Federal Hazardous Substances Act, the petitioner asserts that additional special packaging is necessary. Specifically, the petitioner requests that the CPSC initiate rulemaking ''that would require manufacturers of [torch fuel and lamp oils] to package the product in containers that make it impossible to see the product when in the container.'' The petitioner notes that this could be accomplished ''by packaging the fuel in a solid container or opaque plastic child-resistant container or a metal container.''

The notice that we published in the **Federal Register** of July 26, 2011 (76 FR 44506) stated that we invited comments on the petition, and it informed interested parties how to obtain a copy of the petition. The notice indicated that the comment period would close on September 26, 2011.

Recently, counsel representing the petitioner contacted the Commission to request an extension of the comment period. We note that the docket for this proceeding, as of September 28, 2011, contains nearly 260 comments. Thus, given the interest in this subject, we are reopening the comment period for any interested parties until November 16, 2011.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, MD, or from our Web site at: *http://www.cpsc.gov.*

Dated: October 11, 2011.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–26691 Filed 10–14–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[Docket No. IA–016–FOR; Docket ID: OSM–2011–0014]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposes to revise its regulatory program by updating its adoption by reference of applicable portions of the Code of Federal Regulations. Iowa intends to revise its program to be consistent with the corresponding Federal regulations.

This document provides the times and locations that the Iowa program and proposed amendments to this program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on the amendment until 4 p.m., c.d.t., November 16, 2011. If requested, we will hold a public hearing on the amendment on November 14, 2011. We will accept requests to speak at a hearing until 4 p.m., c.d.t., November 1, 2011.

ADDRESSES: You may submit comments, identified by Docket No. IA–016–FOR, by any of the following methods:

- *E-mail: agilmore@osmre.gov.* Include Docket No. IA–016–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002.
- *Fax:* (618) 463–6470.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2011–0014. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Iowa regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Alton Field Division; or you can view the full text of the program amendment available for you to read at *http://www.regulations.gov.*

Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. E-mail: *agilmore@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Mines & Minerals Bureau, 502 E. 9th Street, Henry A. Wallace Building, Des Moines, Iowa 50319. Telephone: (515) 281–5347.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *agilmore@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program
II. Description of the Proposed Amendment
III. Public Comment Procedures

IV. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

Iowa uses a system of coal mining regulations that adopt the Federal regulations under SMCRA that are in effect up to a specific date. They note in their regulations, variations from the Federal regulations, primarily in reference to agency names, responsible officials, and other provisions to reflect Iowa law. The approved Iowa program is structured this way.

II. Description of the Proposed Amendment

By letter dated August 25, 2011 (Administrative Record No. IA–451), the Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (IDSC) sent us amendments to its Program under SMCRA (30 U.S.C. 1201 *et seq.*) to satisfy ownership and control requirements and to update other provisions. Below is a summary of the changes proposed by Iowa. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *http://www.regulations.gov*.

Adoptions by Reference of 30 CFR Part 700 to End Revised as of July 1, 2010

Iowa proposes to amend its adoption by reference regulations by updating dates of Federal regulations adopted to July 1, 2010, adding citations in its ownership and control requirement sections, and making other changes, all listed in the table below.

27 Iowa Administrative Code Chapter 40, coal mining rules	Topic
27—40.1(1)	Authority and scope.
27—40.3(207)	General.
27—40.4(207)	Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals.
27—40.5(207)	Restrictions on financial interests of State employees.
27—40.6(207)	Exemptions for coal extraction incident to government—financed highway or other constructions.
27—40.7(207)	Protection of employees.
27—40.11(207)	Initial regulatory program.
27—40.12(207)	General performance standards—initial program.
27—40.13(207)	Special performance standards—initial program.
27—40.21(207), 40.21(3), 40.21(7)	Areas designated by an Act of Congress.
27—40.22(207), 40.22(1)	Criteria for designating areas as unsuitable for surface coal mining operations.
27—40.23(207)	State procedures for designating areas unsuitable for surface coal mining operations.
27—40.30(207)	Requirements for coal exploration.
27—40.31(207), 40.31(9), 40.31(10), 40.31(11).	Requirements for permits and permit processing.
27—40.32(207), 40.32(7)	Revision or amendment; renewal; and transfer, assignment, or sale of permit rights.
27—40.33(207)	General content requirements for permit applications.
27—40.34(207)	Permit application—minimum requirements for legal, financial, compliance, and related information.
27—40.35(207)	Surface mining permit applications—minimum requirements for information on environmental resources.
27—40.36(207), 40.36(2)	Surface mining permit applications—minimum requirements for reclamation and operation plan.
27—40.37(207)	Underground mining permit applications—minimum requirements for information on environmental resources.
27—40.38(207), 40.38(6)	Underground mining permit applications—minimum requirements for reclamation and operation plan.
27—40.39(207), 40.39(2), 40.39(3)	Requirements for permits for special categories of mining.
27—40.41(207)	Permanent regulatory program—small operator assistance program.
27—40.51(207)	Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.
27—40.61(207)	Permanent program performance standards—general provisions.
27—40.62(207)	Permanent program performance standards—coal exploration.
27—40.63(207)	Permanent program performance standards—surface mining activities.
27—40.64(207)	Permanent program performance standards—underground mining activities.
27—40.65(207)	Special permanent program performance standards—auger mining.
27—40.66(207)	Special permanent program performance standards—operations on prime farmland.
27—40.67(207)	Permanent program performance standards—coal preparation plants not located within the permit area of a mine.
27—40.71(207)	State regulatory authority—inspection and enforcement.
27—40.74(207)	Civil penalties.
27—40.75(207)	Individual civil penalties.
27—40.81(207)	Permanent regulatory program requirements—standards for certification of blasters.
27—40.82(207)	Certification of blasters.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Iowa program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on November 1, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public. If possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 6, 2011.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

[FR Doc. 2011–26764 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–032–FOR; Docket ID OSM–2011–0011]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposes changes to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) that differentiate between coal beneficiation and coal preparation plants. Montana intends to revise its program to clarify ambiguities and improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. November 16, 2011. If requested, we will hold a public hearing on the amendment on November 14, 2011. We will accept requests to speak until 4 p.m., m.d.t. on November 1, 2011.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2011–0011. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:*Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment

Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov,* you may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director,Casper Field Office, Office of Surface Mining Reclamation and Enforcement,Dick Cheney Federal Building, POB 11018, 150 East B Street,Casper, Wyoming 82601–1018, (307) 261–6555, *jfleischman@osmre.gov;*

Edward L. Coleman, Bureau Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901, (406) 444–4973, *ecoleman@mt.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6555. *Internet: jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act .'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15 and 926.30.

II. Description of the Proposed Amendment

By letter dated June 7, 2011, Montana sent us a proposed amendment to its program (Administrative Record Docket ID No. OSM–2011–0011) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the amendment to include changes made to the MSUMRA as a result of the Montana Legislature's 2011 passage of a Senate Bill relating to coal beneficiation. Under the Senate Bill, a ''coal beneficiation plant'' means a commercial facility where coal is subject to coal preparation that is not operated, owned, or controlled by the mine operator providing the coal.

Specifically, Montana proposes to amend the MSUMRA to (1) differentiate a coal beneficiation plant from a coal preparation plant by way of ownership, control, or operation by someone other than the mine operator of the mine providing the coal; and (2) clarify that a ''coal preparation plant'' means a facility ''in connection with a strip-mine or underground coal mine'' and the term does not mean ''a facility where coal is prepared and then converted into another energy form or to a gaseous or liquid hydrocarbon; or a coal beneficiation plant.'' As a result of these changes, the Department of Environmental Quality would no longer have regulatory authority through MSUMRA over facilities that meet the definition of a ''coal beneficiation plant.'' The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, 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 in the electronic docket for this rulemaking at *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on November 1, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written

summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 2011.

Robert C. Postle,

Acting Director, Western Region.

[FR Doc. 2011–26769 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–033–FOR; Docket ID OSM–2011–0012]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposes changes to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) that pertain to coal prospecting. Montana intends to revise its program to comply with changes made in the 2011 Montana Legislature as a result of the passage of Senate Bill 286.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. November 16, 2011. If requested, we will hold a public hearing on the amendment on November 14, 2011. We will accept requests to speak until 4 p.m., m.d.t. on November 1, 2011.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2011–0012. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov*, you may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018. (307) 261–6555. *jfleischman@osmre.gov.*

Edward L. Coleman, Bureau Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901. (406) 444–4973. *ecoleman@mt.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6555. Internet: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15 and 926.30.

II. Description of the Proposed Amendment

By letter dated July 20, 2011, Montana sent us a proposed amendment to its program (Administrative Record Docket ID No. OSM–2011–0012) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the amendment to include changes made to the MSUMRA as a result of the 2011 Montana Legislature passage of Senate Bill 286 relating to coal prospecting.

Specifically, Montana proposes to amend the MSUMRA to modify the coal prospecting procedures to allow for a new type of coal prospecting permit (shortened prospecting permitting process) with expedited timeframes when prospecting is conducted to determine the location, quantity, and quality of coal that is (1) outside an area

designated as unsuitable, (2) does not remove more than 250 tons, and (3) does not substantially disturb the natural land surface. The effect of the modified procedures cause MSUMRA to have three tiers of prospecting regulation, rather than the currently approved two tiers. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, 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 in the electronic docket for this rulemaking at *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on November 1, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 22, 2011.

Billie Clark,

Acting Director, Western Region.

[FR Doc. 2011–26771 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No.: PA–159–FOR; Docket ID: OSM–2010–0017]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of the comment period.

SUMMARY: We are reopening and extending the public comment period on the proposed amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) published on February 7, 2011. In response to a required program amendment codified in the Federal regulations, Pennsylvania submitted information that it believes demonstrates that sufficient funds exist to guarantee coverage of the full cost of land reclamation at all sites originally permitted and bonded under its now-defunct alternative bonding system. Pennsylvania requested that the program amendment be removed based on the information provided. The comment period is being extended to incorporate subsequent information that we received from Pennsylvania regarding one permit involving land reclamation obligations.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time November 1, 2011.

ADDRESSES: You may submit comments, identified by ''SATS No.: PA–159–FOR; Docket ID: OSM–2010–0017'' by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2010–0017. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier

Mr. George Rieger, Chief,Pittsburgh Field Division,Office of Surface Mining Reclamation and Enforcement,Harrisburg Transportation Center,415 Market St., Suite 304,Harrisburg, Pennsylvania 17101,Telephone: (717) 782– 4036, E-mail: *grieger@osmre.gov.*

Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection,Rachel Carson State Office Building,P.O. Box 8461,Harrisburg, Pennsylvania 17105–8461,Telephone: (717) 787–5015, E-mail: *tcallaghan@state.pa.us.*

Instructions: All submissions received must include the agency Docket ID (OSM–2010–0017) for this rulemaking. For detailed instructions on submitting comments and additional information, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. E-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION: On February 7, 2011 (76 FR 6587), we published a proposed rule that was in response to a required program amendment codified in the Federal regulations. The submission included information that Pennsylvania had submitted to demonstrate that sufficient funds exist to guarantee coverage of the full cost of land reclamation at all sites originally permitted and bonded under the now-defunct alternative bonding system. Pennsylvania requested that the program amendment be removed based on the information provided.

On June 13, 2011, (Administrative Record Number PA 802.80), we received additional information from Pennsylvania regarding recent developments involving one permit that was transferred to another company, resulting in the posting of full-cost bond in an amount to cover the land reclamation obligation. Included with this submission is the mining permit, Part C (Authorization to Mine), and the calculation sheet documenting the bond amount.

We are reopening and extending the comment period to incorporate subsequent information that we received from Pennsylvania regarding one permit involving land reclamation obligations.

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We would appreciate all comments relating to this specific issue, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or other relevant publications.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 2011.

Thomas D. Shope,

Regional Director,Appalachian Region.

[FR Doc. 2011–26762 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB13

Bank Secrecy Act Regulations: Definition of ''Monetary Instrument''

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is proposing to amend the definition of ''monetary instrument'' in the Bank Secrecy Act (''BSA'') regulations for purposes of the international transport of currency and monetary instrument reporting requirement to include tangible prepaid access devices.

DATES: Written comments on this notice of proposed rulemaking must be submitted on or before December 16, 2011.

ADDRESSES: You may submit comments, identified by RIN 1506–AB13, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include 1506–AB13 in the submission. Refer to Docket Number FINCEN–2011–0003.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506–AB13 in the body of the text. Please submit comments by one method only. Comments submitted in response to this notice of proposed rulemaking will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov*. Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: FinCEN, Regulatory Policy and Programs Division at (800) 949–2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Background

The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (the ''Secretary'') to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis to protect against international terrorism.'' [1] The Secretary's authority to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.[2] FinCEN has interpreted the BSA through implementing regulations (''BSA regulations'' or ''BSA rules'') that appear at 31 CFR Chapter X.[3]

Reports on the international transportation and receipt of monetary instruments are among those authorized by the BSA.[4] Pursuant to this authority, FinCEN has issued regulations requiring that a form be filed reporting the international transportation, mail, or shipment of currency or other monetary instruments in an aggregate amount that exceeds $10,000.[5] The regulations, initially issued in 1972, are currently found at 31 CFR 1010.340, and the definition of ''monetary instrument'' is at 31 CFR 1010.100(dd).

The term ''monetary instrument'' is defined in the BSA to include currency and a variety of bearer negotiable instruments, securities, and similar items, but does not specifically include any types of prepaid access devices.[6] Nevertheless, FinCEN has regulatory authority to expand the definition of monetary instruments to include items deemed to be ''similar materials'' to coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock on which title is passed on delivery.[7] Pursuant to this authority, FinCEN is proposing to amend the definition of ''monetary instrument'' for purposes of the international transport of currency and monetary instrument reporting (''CMIR'') requirement at 31 CFR 1010.340 to include *tangible* prepaid access devices.

On May 22, 2009, when FinCEN regulations still referred to stored value rather than prepaid access, the President signed the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (''CARD Act'').[8] Section 503 of the CARD Act required the issuance of ''regulations in final form implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards.'' [9] The CARD Act authorizes ''regulations regarding international transport'' of prepaid access devices, including ''reporting requirements pursuant to Section 5316 of title 31, United States Code.''

Pursuant to the BSA and CARD Act, FinCEN published the Notice of Proposed Rulemaking—Definitions and Other Regulations Relating to Prepaid Access on June 28, 2010 (''Prepaid Access NPRM''),[10] and, on July 29, 2011, issued a Final Rule entitled ''Definitions and Other Regulations Relating to Prepaid Access'' (the ''Prepaid Access Final Rule'').[11] The Final Rule contains definitions of ''prepaid access'' [12] and related terms and imposes registration, reporting, record-keeping, and anti-money laundering program requirements on providers and sellers of prepaid access. While the Final Rule does not address reporting requirements for prepaid access with respect to the international transport of monetary instruments pursuant to 31 CFR 1010.340 because it's provisions provide definitions and requirements for money services businesses, it does provide the necessary first step before this rule could be proposed by creating a regulatory framework and definition of prepaid access.

Congress enacted the requirements of the CARD Act because of the potential to substitute prepaid access for cash and other monetary instruments as a means to smuggle the proceeds of illegal activity into and out of the United States, as various reports and cases have suggested.[13] In a May 13, 2009 statement, Senator Collins, introducing the amendment that added Section 503 to the CARD Act, stated:

> ''[S]tored value cards have been used and are being used by Mexican drug cartels to smuggle their drug revenues back to Mexico. The Department of Justice estimates that up to $24 billion in cash is smuggled into Mexico each year from the United States and these stored value cards are one of the means by which the cash is smuggled back into Mexico. Stored value cards can be loaded anonymously by individuals who are involved in criminal enterprises, such as drug trafficking. The cards are then physically smuggled across the border and can be used to withdraw large quantities of cash from ATMs.'' [14]

The 2007 National Money Laundering Strategy stated that prepaid access is ''* * * an emerging cash alternative for both legitimate consumers and money launderers alike.'' [15] A U.S. Immigration and Customs Enforcement official cited a case example where

> ''hundreds of [prepaid cards] were found concealed in a compartment similar to those used to conceal cash, drugs and other contraband. The cards are also being used by criminal organizations to cover 'expenses' incurred by their couriers as they transport cash, drugs and other contraband across the country * * * '' [16]

This proposal addresses the money laundering and terrorist financing vulnerabilities illustrated by these examples.

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[1] 31 U.S.C. 5311.

[2] *See* Treasury Order 180–01 (Sept. 26, 2002).

[3] On October 26, 2010, FinCEN issued a final rule creating a new Chapter X in Title 31 of the Code of Federal Regulations for the BSA regulations. *See* 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule) (referred to herein as the ''Chapter X Final Rule''). The Chapter X Final Rule became effective on March 1, 2011.

[4] 31 U.S.C. 5316.

[5] The report is filed on Form 105, ''Report of International Transport of Currency or Monetary Instruments'' (''CMIR'').

[6] Specifically, 31 U.S.C. 5312(a)(3) defines ''monetary instruments'' to mean:

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and *similar material;* and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form. (Emphasis added.)

[7] *Id.*

[8] P.L. 111–24 (May 22, 2009), 123 Stat. 1734.

[9] *Id.,* Sec. 503(a), (c).

[10] 75 FR 36589. The Prepaid Access NPRM discussed FinCEN's engagement with the Department of Homeland Security and other members of the law enforcement community in an attempt to identify appropriate solutions regarding reporting of the international transport of prepaid access, *see* 75 FR 36593.

[11] 76 FR 45403.

[12] The Final Rule defines ''prepaid access'' as access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number. 31 CFR 1010.100(ww). The Final Rule replaces the term ''stored value'' with ''prepaid access.''

[13] *See* Money Laundering Using New Payment Methods, Financial Action Task Force, October 2010 (*http://www.fatf-gafi.org/dataoecd/4/56/46705859.pdf*).

[14] *See* 155 Cong. Rec. S5426–5427

[15] *See http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/nmls.pdf.*

[16] Statement of Kumar C. Kibble, Deputy Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the U.S. Senate Caucus on International Narcotics Control, March 9, 2011.

B. Legislative History of 31 U.S.C. 5316

The proposal is consistent with the legislative history of the definition of monetary instrument and the border reporting requirement. When Congress enacted the BSA, it defined ''monetary instrument'' for purposes of the international transport reporting requirement to mean:

''* * * coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, *or the equivalent thereof,* as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates.'' [17] (Emphasis added.)

The Treasury Department was a key proponent of the BSA, as part of which it advocated for a border reporting requirement for monetary instruments to include ''U.S. currency or *its equivalent,* such as foreign currency, travelers checks, *and other items which can pass freely by delivery*,'' (emphasis added) in order to remove a potential loophole in the reporting regime.[18]

The definition was amended when Congress revised and restated Title 31 of the United States Code by deleting the phrase ''or the equivalent thereof'' and substituting the phrase ''or similar material.'' [19] Congress expressly stated that this change was not intended to make a substantive change to the meaning and was done only for clarity.[20] With this change, Congress articulated a preference for the phrase ''similar material,'' signaling that it more clearly explained the intent of the provision than the phrase ''the equivalent thereof'' in the original text.

II. Meaning of ''Similar Material''

Based on this legislative history, it is clear that Congress was concerned with persons transferring monetary value anonymously across international borders, particularly in connection with criminal activity. Clearly, such activity at the time of enactment was primarily accomplished through the use of currency and other substitutes for currency, such as bearer negotiable instruments or securities. Accordingly, the definition contains a list of such substitutes for currency identified for this purpose. However, the definition is not limited to the listed items, but is expressly expanded to include other ''similar material.''

The authority to extend these reports to *items similar to U.S. currency* is consistent with the legislative purpose behind BSA reporting—facilitating the traceability of currency and its equivalents and eliminating anonymous international flows of money. FinCEN believes it is reasonable to conclude that items that can be used to accomplish the same anonymous transfer of monetary value Congress sought to reach are items properly within the scope of the term ''monetary instrument.'' Moreover, FinCEN finds that this interpretation is consistent with the purpose of the BSA to address gaps in the ability to trace the flow of currency and its equivalents through reporting requirements that are highly useful in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis to protect against international terrorism.[21]

Prepaid access devices are ''similar material'' to the items listed in the definition of a monetary instrument in 31 U.S.C. 5312(b)(3), ''travelers checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery,'' in that they can be used as a substitute for currency, the funds they provide access to are accessible by the bearer of the device, and they can be transferred from person to person without a record of the chain of title. In particular they are similar to traveler's checks and bearer negotiable instruments such as cashier's and certified checks.

Although a traveler's check has the formal characteristics of a negotiable instrument,[22] it is used and accepted as ready cash because payment is guaranteed by the issuer, who has already received the value of the funds represented on the face of the check. Those funds are held in an account specifically for that purpose, although the account is not one established by the purchaser.[23] Traveler's checks are purchased from the issuer in advance of use and in amounts corresponding to specific denominations of United States or foreign currency.

Under the Uniform Commercial Code (the ''UCC''), a negotiable instrument is an unconditional order or promise to pay a fixed or determinable amount of money to bearer or to order that is payable on demand or at a definite time.[24] Rights and obligations contained in a negotiable instrument can be altered by endorsement. The ordinary manner in which the payee of a check endorses that check is by placing his or her signature on the back of it. An endorsement may be made after a specific direction (''pay to Dolly Madison'' or ''for deposit only''), called a qualified or restricted endorsement, or with no qualifying or restricting language, thereby making it payable to the holder, called a blank endorsement. A blank endorsement creates a bearer negotiable instrument, which is payable to whomever possesses it, just like most tangible prepaid access devices. Once endorsed in blank, a negotiable instrument can be transferred without any record of transfer.

Common negotiable instruments include cashier's and certified checks. A cashier's check represents funds paid by the purchaser to a bank, as represented by the face value. The check is issued and certified by the bank on the bank's own account (not that of the purchaser).[25] The check will state the name of both purchaser and payee but because it is a negotiable instrument, it can be transformed into a bearer negotiable instrument by a blank endorsement. A cashier's check does not depend on a private account and, therefore, is received as cash. Certified

[17] Section 203(l), Public Law 91–508, H.R. 15073 (Oct. 26, 1970).

[18] Hearings before the Committee on Banking and Currency (House) regarding H.R. 15073, Statement of Eugene T. Rossides, Assistant Secretary of the Treasury for Enforcement and Operations (March 2, 1970), p. 151. In subsequent testimony, Assistant Secretary Rossides testified further with regard to the importance of including in the definition, in addition to U.S. currency and particular instruments, the phrase ''or their equivalent'': ''The term 'or their equivalent' is necessary to permit the Secretary of the Treasury the necessary discretion to include other types of instruments which are easily transferrable which may not be in bearer form.'' Hearings before the Subcommittee on Financial Institutions of the Committee on Banking and Currency (Senate) regarding S. 3678 and H.R. 15073 (June 8, 9, 10, and 11, 1970), Statement of Eugene T. Rossides, Assistant Secretary of the Treasury for Enforcement and Operations (June 9, 1970), p. 183 (internal citations omitted). (Emphasis in original.)

[19] 31 U.S.C. 5312(a)(3).

[20] Public Law 97–258 (Sept. 13, 1982), enacting H.R. 6128 to revise, codify and enact without substantive change certain general and permanent laws related to money and finance as Title 31, United States Code. ''This bill makes no substantive change in the law.'' Committee Report No. 97–651 to H.R. 6128, p.28 (July 21, 1982) (In subsection (a)(3)(B), the words ''in addition'', and ''and such types of'' are omitted as surplus. The words ''similar material'' are substituted for ''the equivalent thereof'' for clarity).

[21] 31 U.S.C. 5311.

[22] *See* UCC 3–104(i) and 12 CFR 229.2(hh) (Availability of Funds and Collection of Checks (Regulation CC)).

[23] Generally, traveler's checks are thought of as being ''safer than cash'' because issuers promise to replace them if they are lost or stolen. Further, they have no expiration date and hold their face value until used.

[24] *See* UCC § 3–104 (1990, unchanged in 2002 revisions). Technically, there is an additional requirement: that the order or promise not state any other undertaking or instruction by the person promising or ordering payment.

[25] *See* UCC § 3–104(g) and 12 CFR 229.2(i) (Availability of Funds and Collection of Checks (Regulation CC)).

checks are similar in that the face value of the check represents funds paid by the purchaser to a bank, which is guaranteed for payment and can be converted into a bearer negotiable instrument.[26]

These instruments are similar to tangible prepaid access devices in that they are issued based on funds already received by the issuer, which is intended to facilitate immediate payment. The promises or orders underlying them are guaranteed for payment, giving them enhanced liquidity—the quintessential purpose of these instruments—enabling them to be treated as a substitute for cash. As bearer instruments, they are payable to whomever has possession, allowing transfers to be made with no record of the chain of ownership. Tangible prepaid access devices serve the identical purpose. In this context prepaid access devices serve as ready cash or the value of cash, and as a means of payment, are intended to provide the same (or superior) certainty as the bearer instruments listed in the definition of monetary instrument. The funds represented by prepaid access devices are payable to or readily usable by the bearer of the device, with no record necessary to track the chain of ownership. Consequently, FinCEN believes that prepaid access devices are ''similar material'' to those bearer instruments that are included in the definition of monetary instruments.

III. Section-by-Section Analysis

Under the Prepaid Access Final Rule, FinCEN regulations define the term ''prepaid access'' very broadly to mean ''[a]ccess to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.'' [27] While the devices or vehicles that can provide access to prepaid funds are potentially limitless, this proposal is narrowly focused on tangible prepaid access devices transported, mailed, or shipped across the border of the United States.

A. Proposed 31 CFR 1010.100(dd)

Pursuant to FinCEN's authority under 31 U.S.C. 5312, FinCEN proposes to amend 31 CFR 1010.100 by revising the definition of ''monetary instrument'' as that term is used for purposes of complying with the CMIR requirement at § 1010.340. In particular, the proposed revisions would add prepaid access devices to the BSA definition of monetary instrument by revising 31 CFR 1010.100(dd)(2) and add a new 31 CFR 1010.100(dd)(3) that would incorporate the exclusions for warehouse receipts and bills of lading, currently found at 31 CFR 1010.100(dd)(2), as well as adding exclusions for credit and debit cards. The proposed revisions to 31 CFR 1010.100(dd) would: (a) Expand the definition to include *tangible* prepaid access devices; (b) limit the application of the expanded definition to tangible prepaid access only for purposes of the CMIR reporting requirement at § 1010.340; (c) establish that the value of any such prepaid access device would be determined by the amount of the funds available through the device at the time of physical transportation, mail or shipment into or out of the United States; and (d) clarify that credit cards and debit cards are not a form of monetary instrument for BSA purposes.

1. Proposed 31 CFR 1010.100(dd)(2)

The proposed revision to 31 CFR 1010.100(dd)(2) would provide that, for purposes of the CMIR regulations issued pursuant to 31 U.S.C. 5316, the definition of monetary instrument includes tangible prepaid access devices.

The proposed inclusion of ''tangible prepaid access devices'' within ''monetary instrument'' is limited in scope to CMIR filing obligations found at 31 CFR 1010.340 and related BSA rules involving the definitions, penalty, seizure, and enforcement provisions that refer to those obligations. This proposed regulation is not intended to extend to tangible prepaid access devices the record keeping and other reporting requirements applicable to monetary instruments under other provisions of the BSA regulations.

The term ''tangible prepaid access device'' is defined at 31 CFR 1010.100(dd)(2) to mean ''any physical item that can be transported, mailed, or shipped into or out of the United States and the use of which is dedicated to obtaining access to prepaid funds or the value of funds by the possessor in any manner without regard to whom the prepaid access is issued.'' This definition includes the predominant forms of prepaid devices such as general-use prepaid cards, gift cards, store cards, payroll cards, and government benefit cards. It also includes cell phones and other tangible devices to the extent that they themselves, or an item built into or attached to them, provide access to prepaid funds or the value of funds by being readable by a device employed for the purpose by merchants. The proposed definition does not reach intangible vehicles for accessing prepaid funds or the value of funds, such as codes and PINs. It also does not reach tangible items that may be incidental to obtaining access to intangible prepaid access, such as laptop computers, Web-enabled cell phones, or other devices that are not dedicated to accessing specific prepaid funds.

The proposed revision to 31 CFR 1010.100(dd)(2) would also provide that the point in time at which the value of a tangible prepaid access device is measured is the time at which it crosses into or out of the United States. For purposes of complying with the CMIR reporting requirement at § 1010.340, the proposed definition would establish that the balance available through any such access device as a monetary instrument ''at the time of the physical transportation, mail, or shipment into or out of the United States'' would be the reportable value. In cases of mail or shipment, there is a presumption that the value available through the device remains the same throughout the period of shipment.

2. Proposed 31 CFR 1010.100(dd)(3)

The proposed revisions clarify that credit and debit cards are not a form of monetary instrument for BSA purposes. For this purpose the proposed definition adopts the definition of credit card used in the consumer credit protection law [28] and Truth-In-Lending Act regulations (Regulation Z),[29] which define the term to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. With respect to debit cards, the proposed definition adopts the portion of the definition of debit card used in the consumer credit protection law,[30] which defines the term to mean any card, or other payment code or device, issued or approved for use through a payment card network to debit an individual's asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means. The proposed definition would not adopt the rest of the debit card definition in the consumer credit protection law that goes on to include general-use prepaid cards and exclude paper checks.[31] Debit cards associated with a bank account are not included

[26] 12 CFR 229.2(j) (Availability of Funds and Collection of Checks (Regulation CC)).

[27] 31 CFR 1010.100(ww).

[28] 15 U.S.C. 1602(k).

[29] 12 CFR 226.2(15).

[30] 15 U.S.C. 1693o–2(c)(2)(A).

[31] 15 U.S.C. 1693o–2(c)(2)(B) and (C).

within the meaning of the term monetary instrument.

B. Proposed 31 CFR 1010.340(c)(10)

The proposed regulation would add new 31 CFR 1010.340(c)(10) to exclude from the reporting requirement the international transportation, mail, or shipment of tangible prepaid access devices by a business or its agent offering such products prior to their delivery to a seller for sale to the public. This provision mirrors the exclusion for a traveler's check issuer or its agent found at 31 CFR 1010.340(c)(7). The phrase ''[a] business participating in the offering of tangible prepaid access devices or its agent'' is intended to include all of the participants in a prepaid access program and their agents, if any. The proposed rule is only intended to capture tangible prepaid access devices that have been purchased for use, loaded with funds, and ''activated'' by whatever process a particular prepaid program requires for loaded funds to be made available for use.

IV. Questions for Public Comment

A. There may be obstacles to law enforcement identifying prepaid access devices and verifying the available balance. Branded open loop prepaid access devices can be indistinguishable from credit and debit cards, making it difficult for border agents and other law enforcement authorities to identify prepaid access devices. Various impediments, such as the Right to Financial Privacy Act [32] or state privacy laws involving individuals' bank records, may make it difficult to determine the available balance of an underlying prepaid access device, since the value is not generally indicated on its face.[33] Further, where the prepaid access device takes a novel form (not a card or chip), law enforcement may not be prepared with a device to read the available balance. Moreover, since a holder of certain prepaid access devices may experience difficulties in retrieving records concerning the prepaid access device, a declaration concerning available balance may be unintentionally inaccurate. The holder may also not be directly responsible for adding value to the prepaid program, which could also result in a declaration concerning the available balance being unintentionally inaccurate. FinCEN requests comment on these and any other potential obstacles to law enforcement identifying prepaid access devices and verifying the accessible value, including suggestions as to how they may be addressed.

B. Prepaid access devices vary in form and function, including closed loop cards that can be used only at a specific store or merchant, or for a specific service, and cannot be used at ATMs to access cash. These cards typically bear no information identifying the cardholder, so they can be used by anyone who possesses the card. Although their limited functionality may mitigate their potential use as a money laundering device as they cannot be used as a cash access device, they might be sold outright for cash. Should these closed loop cards continue to be subject to a border declaration obligation as proposed? Should other types of lower-risk prepaid access devices that are not considered prepaid programs under the final prepaid rule be excluded from the definition of monetary instruments, such as government-funded, limited-value, or payroll cards?

C. Branded open loop reloadable cards are the prepaid access device most similar to debit cards, some allowing both cash access via ATMs and the ability to conduct transactions at a physical point of sale or online. Currently, in the United States, debit cards and open loop prepaid access cards that bear a global network brand (*e.g.,* MasterCard and Visa), are exclusively issued by depository institutions. Depository institutions are already subject to a full slate of anti-money laundering (''AML'') obligations, including a customer identification program rule.[34] Consequently, these cards may bear the name, embossed on the front of the card, of the person to whom the card has been issued in the same manner as a debit or credit card. Should branded open loop reloadable prepaid cards with the name of the person to whom the card has been issued embossed on the front of the card be subject to border declaration as monetary instruments?

D. Certain prepaid access programs, whether open or closed loop, allow value to be added remotely to the funds accessible via the card or other device. The effect is that someone other than the holder can add value to the funds available to the holder. This is a typical arrangement, for example, when parents give a prepaid access card to a child away at school or when migrant laborers use a prepaid access device to provide financial support to family members who remain in the home country. In these circumstances, a prepaid access card or device may cross the border out of or into the United States without an available balance, but may later, when funds are added to the prepaid access device, be able to access value. Should the border declaration obligation be associated with the value immediately available to a prepaid access device at the time the device enters or leaves the country or should the declaration obligation apply to the potential maximum value available via the prepaid access device?

E. Payment technology is a fast moving industry, with new programs and access devices and methods constantly in development. There may soon be the potential for a code or password, or object not typically associated with payment system access (*e.g.,* cell phone or key fob), to be brought into or taken out of the United States and used to access cash drawn from a prepaid access program either via an ATM or otherwise. Should the border declaration apply to codes, passwords, and other intangibles as well as to any tangible object that is dedicated to accessing prepaid funds? Should it only apply to cards, or also to cell phones, key fobs, or other tangible objects that include a device that enables them to function in a similar manner to ''swiping'' a magnetic stripe card?

F. FinCEN also specifically requests comments identifying any additional costs associated with the completion of the CMIR form as a result of this proposed rule.

G. FinCEN requests comment regarding whether it is appropriate to exempt, in proposed 31 CFR 1010.340(c)(10), the international transport mail or shipment by a prepaid access business or its agents of tangible prepaid access devices prior to their delivery to a seller for sale to the public. This provision would parallel the exemption for traveler's checks found at 31 CFR 1010.340(c)(7).

H. FinCEN requests comment on whether devices that require a PIN number for a point of sale or for ATM use should be excluded as intangible prepaid access.

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a

[32] 12 U.S.C. 3401, *et seq.*

[33] *The Credit CARD Act of 2009 and Prepaid Cards,* Payment Cards Center Note, Federal Reserve Bank of Philadelphia, August 2009.

[34] 31 CFR 1020.220.

significant economic impact on a substantial number of small entities.

The proposed rule will apply to all persons, a term that includes individuals and entities of all sizes, if they conduct a reportable action under the rule. The proposed rule is targeted at obtaining reports from individuals transporting over $10,000 in currency, tangible prepaid access devices, or other monetary instruments into or out of the United States. FinCEN estimates that the number of reports filed by small entities will be few and not impact a substantial number of those entities.[35]

FinCEN estimates that the proposed rule will result in a total of 8,000 annual reports.[36] The majority of these reports will be filed by individuals. FinCEN estimates that each report will take 11 minutes to complete. FinCEN does not believe that this proposed rule will have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605) and the reasons stated above, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. FinCEN invites comments on the impact of this proposed rule on small entities.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the information collection should be sent to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503, or by the Internet to *oira_submission@omb.eop.gov* with a copy to the Financial Crimes Enforcement Network by mail or as part of the comments through the Internet. Comments are welcome and must be received by December 16, 2011.

Report of International Transportation of Currency or Monetary Instruments (31 CFR 1010.340).Office of Management and Budget Control Number: 1506–0014. (FinCEN Form 105)

This information is required to be provided pursuant to 31 U.S.C. 5316(a). Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes. The collection of information is mandatory. Records required to be retained under the Bank Secrecy Act must be retained for five years. In 2009, OMB approved FinCEN for 51,333 hours under OMB control number 1506–0014. The collection of reports on the international transportation of prepaid devices will add to the estimated burden by 1,467 hours.[37] However, the actual annual reporting activity since 2009 (36,667 hours) has been notably less than the amount approved by OMB in 2009 (51,333 hours). To accommodate for this difference and provide a more accurate estimate going forward, FinCEN is reducing the overall burden for this collection by 7,333 hours. Therefore, as proposed, the net reduction to the overall approved burden under OMB Control Number 1506–0014 is 5,866 hours.

Description of Respondents: Individuals, business or other for-profit institutions, and not-for-profit institutions involved in the international transport of monetary instruments.

Estimated Number of Respondents: The rule decreases the number of reports by 32,000.

Estimated Average Annual Burden Hours per Respondent: The estimated average annual burden associated with the reporting requirement in 31 CFR 1020.340 is 11 minutes.

Estimated Total Annual Recordkeeping Burden: 45,467 hours.

Request for Comments: FinCEN specifically invite comments on: (a) Whether the proposed recordkeeping requirements are necessary for the proper performance of the mission of the FinCEN, and whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required, and (d) how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

VII. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is not a significant regulatory action. Accordingly, a formal review by the Office of Management and Budget is not required.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

List of Subjects in 31 CFR Parts 1010

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, FinCEN proposes to amend 31 CFR part 1010 as follows:

[35] FinCEN has exempted the presale transportation of prepaid devices, thus limiting the majority of instances when an entity, as opposed to an individual, would have been required to report.

[36] In 2010, 200,000 CMIRs were filed. Of those CMIRs filed, 32,000 indicated monetary instruments crossed the border. By comparing the transaction volumes of prepaid devices with other monetary instruments, FinCEN determined that the proposed rule will increase the number of CMIRs indicating monetary instruments by 25% or 8,000 reports. Because the average burden per report is 11 minutes, the proposed rule will increase the collection by 1,467 hours.

[37] *Id.*

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; Title V, section 503, Pub. L. 111–24.

2. Amend § 1010.100 as follows:

a. Revise paragraph (dd)(2); and

b. Add paragraph (dd)(3).

§ 1010.100 General definitions.

* * * * *

(dd) * * *

(2) For the purposes of complying with the currency and monetary instrument reporting requirements issued pursuant to 31 U.S.C. 5316, the term monetary instruments also includes any tangible prepaid access device. The term ''tangible prepaid access device'' means any physical item that can be transported, mailed, or shipped into or out of the United States and the use of which is dedicated to obtaining access to prepaid funds or the value of funds by the possessor in any manner without regard to whom the prepaid access is issued. The value of any such prepaid access device is the amount of the funds available to which the device provides access at the time of physical transportation, mail, or shipment into or out of the United States.

(3) Monetary instruments do not include warehouse receipts, bills of lading, credit cards (as defined in as in 15 U.S.C. 1602(k), including cards defined in 12 CFR 226.2(15)), or debit cards (as defined in 15 U.S.C. 1693o-2(c)(2)(A)).

* * * * *

3. Amend § 1010.340 by adding paragraph (c)(10) to read as follows:

§ 1010.340 Reports of transportation of currency or monetary instruments.

* * * * *

(c) * * *

(10) A business participating in the offering of prepaid access or its agent with respect to the transportation of tangible prepaid access devices prior to their delivery to selling agents for eventual sale to the public;

* * * * *

Dated: October 11, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–26743 Filed 10–14–11; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[EPA–HQ–OAR–2009–0924; FRL–9479–7]

Special Rules Governing Certain Information Obtained Under the Clean Air Act: Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to correct an erroneous reference in EPA's procedures for handling data collected under the Mandatory Greenhouse Gas Reporting Rule, which are provided in the Special Rules Governing Certain Information Obtained under the Clean Air Act. The proposed correction would not change any requirements for entities regulated under the Mandatory Greenhouse Gas Reporting Rule or the final confidentiality determinations EPA has made for such data. In the ''Rules and Regulations'' section of this **Federal Register**, we are making this correction as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received on or before November 16, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0924, by mail to Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2009–0924, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, then select Contact Us.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to correct an erroneous reference in special rules governing certain information obtained under the Clean Air Act (40 CFR part 2, subpart B). We have published a direct final rule making this correction in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If the EPA receives adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so by the comment deadline listed in the **DATES** section of this document. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Regulated Entities. Entities potentially affected by this proposed action include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources		Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines.
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
		MEMS manufacturing facilities.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Fluorinated Gas Production	325120	Industrial gases manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Manufacturing	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Electrical Transmission and Distribution Equipment Use	221121	Electric bulk power transmission and control facilities.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
Suppliers of Coal Based Liquid Fuels	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products	324110	Petroleum refineries.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Suppliers of Natural Gas and NGLs	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial Greenhouse Gases	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO_2)	325120	Industrial gas manufacturing facilities.
Importers and Exporters of Fluorinated Greenhouse Gases in Pre-charged Equipment or Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	336391	Motor vehicle air-conditioning manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	443111	Household appliance stores.
	423730	Automotive air-conditioners merchant wholesalers.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.
Geologic Sequestration of Carbon Dioxide	N/A	CO_2 geologic sequestration projects.
Electrical Equipment Manufacture or Refurbishment	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Industrial Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Injection of Carbon Dioxide	211	Oil and gas extraction projects using CO_2 enhanced oil and gas recovery.
	211111 or 211112	Projects that inject acid gas containing CO_2 underground.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action and 40 CFR part 98. Table 1 of this preamble lists the types of facilities that the EPA is now aware could be potentially affected by this action. Other types of facilities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A, and other subparts as necessary. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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III. Statutory and Executive Order Reviews

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

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

The correction to 40 CFR part 2 would not impose any information collection burden.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed correction to the citation in 40 CFR part 2 on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a

significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would not impose any new requirement on small entities that are not currently required by Part 98. The amendment to 40 CFR part 2 is administrative in nature. Therefore, this rule would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or Tribal governments or the private sector. The action would impose no enforceable duty on any state, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action 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. The correction in this proposed rule revises a citation reference in one section of 40 CFR part 2, subpart B to confirm the original intention of the reference by correcting the citation to statutory authority.

E. Executive Order 13132: Federalism

This proposed change to 40 CFR part 2 would not have federalism implications. It would 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. However, for a more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final part 98 rule (74 FR 56266).

The correction to 40 CFR part 2 is administrative in nature and would apply to data reported under Part 98 by facilities that directly emit GHGs or supply fuel or chemicals that may emit GHGs when used. Part 98 does not apply to governmental entities unless the government entity owns a facility that directly emits GHGs above threshold levels such as large stationary combustion sources or landfills, so relatively few government facilities would be affected. The change to 40 CFR part 2 also would not limit the power of states or local governments to collect GHG data or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

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

This action is not expected to have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is administrative in nature and would not impose any new requirements on Tribes. Thus, Executive Order 13175 does not apply to this action.

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

The 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 would not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The amendments to 40 CFR part 2 are administrative in nature and therefore would not have any adverse impacts on energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 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. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed change to 40 CFR part 2 is administrative in nature and would not involve technical standards. Therefore, the 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

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 the proposed action would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the correction noted would not affect the level of protection provided to human health or the environment. The change to 40 CFR part 2 is administrative in nature and therefore would not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: October 11, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–26765 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2010–0605; FRL–9480–4]

RIN 2060–AQ38

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of trans-1,3,3,3-tetrafluoropropene and 2,3,3,3-tetrafluoropropene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the agency's definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under Title I of the Clean Air Act (CAA). This proposed revision would add 2,3,3,3-tetrafluoropropene (also known as HFO–1234yf) and *trans*-1,3,3,3-tetrafluoropropene (also known as HFO–1234ze) to the list of compounds excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

DATES: Comments must be received on or before November 16, 2011.

Public Hearing: If anyone contacts us requesting to speak at a public hearing on or before November 1, 2011, we will hold a public hearing. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0605, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail*: *a-and-r-Docket@epamail.epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2010–0605.
- *Fax:* 202–566–1541, Attention Docket ID No. EPA–HQ–OAR–2010–0605.
- *Mail:* Docket ID No. EPA–HQ–OAR–2010–0605, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2010–0605. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0605. The 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the 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, *i.e.,* 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 EPA, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711; telephone: (919) 541–3356; fax number: (919) 541–0824; e-mail address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule include, but are not necessarily limited to, states (typically state air pollution control agencies) that control VOCs, and industries involved in the manufacture or use of refrigerants, aerosol propellants, and blowing agents for insulating foams.

Industry group	SIC [a]	NAICS [b]
Refrigerants	2869, 3585	238220, 336111, 336391.
Aerosol propellants	2869	325998.
Blowing agents	2869, 3086	326140, 326150.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

This proposed rule is applicable to all manufacturers, distributors, and users of these chemical compounds. The use of these compounds is subject to restrictions under the CAA and the Toxic Substances Control Act (TSCA). Specifically, the use of these compounds as aerosol propellants, blowing agents, or refrigerants, or any other use in which they would substitute for chlorofluorocarbons, hydrochlorofluorocarbons, or their

substitutes, is subject to restrictions under the Significant New Alternatives Policy (SNAP) program (CAA § 612; 40 CFR 82 subpart G). The SNAP program has issued a final approval for HFO–1234yf as a substitute for use in the motor vehicle air conditioning end-use as a replacement for ozone depleting substances (76 FR 17488, March 29, 2011), and final approvals for HFO–1234ze as a suitable foam and refrigerant substitute and as a propellant (74 FR 50129, September 30, 2009; 75 FR 34017, June 16, 2010). Furthermore, HFO–1234yf is subject to a Significant New Use Rule (SNUR) under TSCA. (75 FR 65987, October 27, 2010). The implications of these other regulations are discussed in more detail in Section III.

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

Submitting CBI: Do not submit this information to the EPA through *http://www.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 the 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.

C. How can I find information about a possible public hearing?

Public Hearing: To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela S. Long, Air Quality Policy Division, Mail code C504–01, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0641, facsimile number (919) 541–5509, e-mail address: *long.pam@epa.gov.*

D. How is this preamble organized?

The information presented in this preamble is organized as follows:

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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.

II. Background

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides (NO_X) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOCs that can be released into the atmosphere. The VOCs are those organic compounds of carbon which form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity—that is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly, or form less ozone; therefore, changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. The EPA lists these negligibly reactive compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOC.

The CAA requires the regulation of VOCs for various purposes. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of ''VOC,'' and hence what compounds shall be treated as VOCs for regulatory purposes. The policy of excluding negligibly reactive compounds from the VOC definition was first laid out in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented most recently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (Interim Guidance) (70 FR 54046, September 13, 2005). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and therefore suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOCs for regulatory purposes and therefore subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA has used three different metrics to compare the reactivity of a specific compound to that of ethane: (i) the reaction rate constant (known as k_{OH}) with the hydroxyl radical (OH); (ii) the maximum incremental reactivities (MIR) of ethane and the compound in question expressed on a reactivity per unit mass basis; and (iii) the MIR of ethane and the compound in question expressed on a reactivity per mole basis. Differences between these three metrics are discussed below.

The k_{OH} is the reaction rate constant of the compound with the OH radical in the air. This reaction is typically the first step in a series of chemical reactions by which a compound breaks down in the air and participates in the ozone-forming process. If this step is slow, the compound will likely not form ozone at a very fast rate. The k_{OH} values have long been used by the EPA as a measure of photochemical reactivity and ozone-forming activity, and they have been the basis for most of the EPA's previous exemptions of negligibly reactive compounds from the regulatory definition of VOC. The k_{OH} metric is inherently a molar comparison, *i.e.,* it measures the rate at which molecules react.

The MIR values, both by mole and by mass, are a more recently developed measure of photochemical reactivity derived from a computer-based photochemical model. This

measurement considers the complete ozone forming activity of a compound, not merely the first reaction step. Further explanation of the MIR metric can be found in: W. P. L. Carter, ''Development of Ozone Reactivity Scales for Volatile Organic Compositions,'' Journal of the Air & Waste Management Association, Vol. 44, 881–899, July 1994.

The MIR values for compounds are typically expressed as grams of ozone formed per gram of VOC (mass basis), but may also be expressed as grams of ozone formed per mole of VOC (molar basis). For comparing the reactivities of two compounds, using the molar MIR values considers an equal number of molecules of the two compounds. Alternatively, using the mass MIR values compares an equal mass of the two compounds, which will involve different numbers of molecules, depending on the relative molecular weights. The molar MIR comparison is consistent with the original smog chamber experiments that underlie the original selection of ethane as the threshold compound and compared equal molar concentrations of individual VOCs. It is also consistent with previous reactivity determinations based on inherently molar k_{OH} values. By contrast, the mass MIR comparison is more consistent with how MIR values and other reactivity metrics have been applied in reactivity-based emission limits, such as the national VOC emissions standards for aerosol coatings (73 FR 15604). Many other VOC regulations contain limits based upon a weight of VOC per volume of product, such as the EPA's regulations for limiting VOC emissions from architectural and industrial maintenance coatings (65 FR 7736). However, the fact that regulations are structured to measure VOC content by weight for ease of implementation and enforcement does not necessarily control whether VOC exemption decisions should be made on a weight basis as well.

The choice of the molar basis versus the mass basis for the ethane comparison can be significant. Given the relatively low molecular weight of ethane, use of the mass basis tends to result in more VOCs being classified as ''negligibly reactive'' than in the case of the molar basis. In some cases, a compound might be considered less reactive than ethane and eligible for VOC exemption under the mass basis but not under the molar basis. The compounds considered in this proposal, HFO–1234yf and HFO–1234ze, fall into this category, where the molar MIR value is greater than that of ethane, but the mass MIR value is equal to or less than that of ethane. However, for both compounds, both MIR values fall in the lower portion of the very wide range of VOC reactivities.

The EPA has considered the choice between a molar or mass basis for the comparison to ethane in past rulemakings and guidance. Most recently, in the Interim Guidance, the EPA stated:

> [A] comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.
>
> When reviewing compounds that have been suggested for VOC-exempt status, EPA will continue to compare them to ethane using k_{OH} expressed on a molar basis and MIR values expressed on a mass basis.

In this action, the EPA is proposing to exempt these compounds using the comparison to ethane on the mass basis MIR value, because MIR values are available for these compounds and the EPA believes that this comparison is appropriate.

The EPA's 2005 Interim Guidance also notes that concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than ozone concentrations, including fine particle formation, air toxics exposures, stratospheric ozone depletion, and climate change. The EPA has recognized, however, that there are existing regulatory and non-regulatory programs that are specifically designed to address these issues, and the agency continues to believe that the impacts of VOC exemptions on environmental endpoints other than ozone formation will be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the ozone NAAQS, and questions have been raised as to whether the agency has authority to use its VOC exemption policy to address concerns that are unrelated to ground-level ozone. Thus, in general, VOC exemption decisions will continue to be based solely on consideration of a compound's contribution to ozone formation. However, if the agency determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, the EPA reserves the right to exercise its judgment in deciding whether to grant an exemption.

In this case, the agency has examined available information on the risks to human health and the environment and applicability of other regulatory programs; that information for the two compounds considered here is discussed further in Section III.

A. Petition to List HFO–1234yf

Honeywell, Inc. submitted a petition to the EPA on June 29, 2009, requesting that HFO–1234yf (CAS 754–12–1) be exempted from VOC control based on its low reactivity relative to ethane. The petitioner indicated that HFO–1234yf may be used as a refrigerant for refrigeration and air-conditioning. Honeywell also indicated that it expects HFO–1234yf to be widely used as a replacement for HFC–134a in motor vehicle air-conditioners (MVAC), and that HFO–1234yf has been specifically developed for this purpose. Honeywell argues that as a replacement for use in motor vehicle air conditioners there will be an environmental advantage in that the global warming potential (GWP) of HFO–1234yf is 4, which is substantially lower than the GWP for HFC–134a (100-year GWP = 1430) which HFO–1234yf is designed to replace. Honeywell submitted several documents, including several peer-reviewed journal articles, to support this petition that have been added to the docket for this action.

B. Petition to List HFO–1234ze

Honeywell, Inc. also submitted a petition to the EPA on December 2, 2009, requesting that HFO–1234ze (CAS 29118–24–9) be exempted from VOC control based on its low reactivity relative to ethane. The petitioner indicated that HFO–1234ze may be used in a variety of applications including as a refrigerant, an aerosol propellant, and a blowing agent for insulating foam. Honeywell submitted several documents, including several peer-reviewed journal articles, to support its petition, all of which have been added to the docket for this action.

III. The EPA's Proposed Responses to the Petitions

Consistent with the Interim Guidance, the EPA's proposed responses to the petitions are based on a consideration of the contribution that each chemical makes to tropospheric ozone formation based on a comparison of reactivity metrics, and our assessment that existing programs or policies already adequately address the possibility that granting each petition would pose a significant risk to human health or the environment. We also believe that the

much lower global warming potential of HFO–1234yf compared to the compound HFC–134a for which it will substitute, as described in Section III.B, is an additional reason to approve the HFO–1234yf petition in particular, given that applying the Interim Guidance itself supports such approval. Information on these topics is given below.

A. Contribution to Tropospheric Ozone

Table 1 presents three reactivity metrics for ethane (the benchmark compound) and for HFO–1234yf and HFO–1234ze which are proposed for exemption from the VOC definition in this proposed rule.

TABLE 1—REACTIVITIES OF ETHANE, HFO–1234ZE AND HFO–1234YF

Compound	k_{OH} (cm^3/molecule-sec)	MIR (g O_3/mole VOC)	MIR (g O_3/gram VOC)
Ethane	2.4×10^{-13}	8.4	0.28
HFO–1234yf	10.5×10^{-13}	31.92	0.28
HFO–1234ze	9.25×10^{-13}	11.2	0.098

Notes:

1. k_{OH} value for ethane is from: R. Atkinson, D. L. Baulch, R. A. Cox, J. N. Crowley, R. F. Hampson, Jr., R. G. Hynes, M. E. Jenkin, J. A. Kerr, M. J. Rossi, and J. Troe (2004), Summary of evaluated kinetic and photochemical data for atmospheric chemistry.
2. k_{OH} value for HFO–1234ze is from: R. Sondergaard, O. J. Nielsen, M. D. Hurley, T. J. Wallington, and R. Singh, "Atmospheric chemistry of *trans*-$CF_3CH{=}CHF$: kinetics of the gas-phase reactions with Cl atoms, OH radicals, and O_3." Chemical Physics Letters, 443 (2007) 199–204.
3. k_{OH} value for HFO–1234yf is from: O.J. Nielson, M.S. Javadi, M.P. Sulbaek Anderson, M.D. Hurley, T.J. Wallington, R. Singh, "Atmospheric Chemistry of $CF_3CF{=}CH_2$: kinetics and mechanisms of gas-phase reactions with Cl atoms, OH Radicals, and O_3," Chemical Physical Letters, 439 (2007) 18–22.
4. Maximum incremental reactivity or MIR (g O_3/g VOC) values of ethane, HFO–1234ze and HFO–1234yf are from: William P. L. Carter, "Development of the SAPRC–07 chemical mechanism and updated ozone reactivity scales" (updated 1/27/10). *http://www.engr.ucr.edu/carter/SAPRC/saprc07.pdf.*
5. Molar MIR (g O_3/mole VOC) values were calculated from the mass MIR (g O_3/g VOC) values by determining the number of moles per gram of the relevant organic compound.

From the data in Table 1, it can be seen that HFO–1234yf has a higher k_{OH} value than ethane, meaning that it initially reacts more quickly in the atmosphere than ethane. A molecule of HFO–1234yf is also more reactive than a molecule of ethane, as shown by the molar MIR (g O_3/mole VOC) values, because equal numbers of moles have equal numbers of molecules. However, a gram of HFO–1234yf has the same reactivity as a gram of ethane. This is because HFO–1234yf has a molecular weight (114) that is more than three times that of ethane (molecular weight 30), and thus requires less than a third the number of molecules of HFO–1234yf per gram than the number of molecules of ethane per gram.

From the data in Table 1, it also can be seen that HFO–1234ze has a higher k_{OH} value than ethane, meaning that it initially reacts more quickly in the atmosphere than ethane. A molecule of HFO–1234ze is also more reactive than a molecule of ethane, as shown by the molar MIR (g O_3/mole VOC) values, since equal numbers of moles have equal numbers of molecules. However, a gram of HFO–1234ze is less reactive, or creates less ozone on the day of its emission to the atmosphere, than a gram of ethane. This is because HFO–1234ze has a molecular weight (114) that is more than three times that of ethane (molecular weight 30), and thus requires less than a third the number of molecules of HFO–1234ze per gram than the number of molecules of ethane needed per gram.

Thus, for both of the petitions submitted by Honeywell, the data supports the contention that the reactivity of the compound in the petition is equal to or lower than that of ethane on a mass MIR basis.

We anticipate that one of these compounds, HFO–1234yf, will be used in automobiles as a replacement for the current refrigerant HFC–134a, which is the only use for which HFO–1234yf has been approved to date under the SNAP program. Given this one-for-one substitution situation, it is informative to compare the ozone forming potential of HFO–1234yf to that of HFC–134a, which has a gram MIR of only 0.0007 and thus contributes very little to ozone formation. The EPA has considered the results of a recent peer-reviewed study of the increase in ozone that may occur as result of the substitution of HFO–1234yf for HFC–134a.[1] Based on air quality modeling, this study found that if HFO–1234yf was used in all automobiles but not in any other application, the incremental amount of ozone formed from its degradation in the atmosphere was only 0.01% of total ozone formed during the simulation due to emissions from all sources. This portion of ozone formation due to automobiles is slightly more than the current baseline, where the refrigerant used is HCF–134a.[2] Thus, the additional information from this study shows that, under the assumptions used in the air quality modeling, the use of HFO–1234yf would produce more ozone than continued use of HFC–134a, but the increase is unlikely to have a significant impact on local air quality. One of the assumptions used in the modeling was that the substitution of one refrigerant for the other would not affect meteorological conditions that also influence ozone formation.

However, as stated in Section II.A, HFO–1234yf has a much lower GWP than HFC–134a. Global warming is predicted to exacerbate high ozone concentrations [3,4], so directionally the lower GWP of HFO–1234yf will offset at least some of the ozone increase predicted by the modeling that assumed identical meteorological conditions. The EPA believes the very small increase in ozone concentrations that may result from encouraging the use of HFO–1234yf via an exemption from the

[1] D. Luecken, R. Waterland, S. Papasavva, K. Taddonio, W. Hutzell, J. Rugh, and S. Andersen. Ozone and TFA Impacts in North America from Degradation of 2,3,3,3–Tetrafluoropropene (HFO–1234yf), A Potential Greenhouse Gas Replacement. Environ. Sci. Technol. 44, pp. 343–349.

[2] The study also noted that if 2,3,3,3-tetrafluoropropene were used in additional applications that are currently not legal in the U.S, *e.g.,* non-vehicle refrigerant applications, its contribution to ozone formation would be greater, but did not quantify this potential contribution.

[3] U.S. EPA. *Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Synthesis of Climate Change Impacts on Ground-Level Ozone* (An Interim Report of the U.S. EPA Global Change Research Program). U.S. Environmental Protection Agency, Washington, D.C., EPA/600/R–07/094F, 2009.

[4] Jacob, Daniel J. and Darrell A. Winner (2009). Effect of climate change on air quality, *Atmospheric Environment,* 43:51–63.

definition of VOC does not constitute a sufficient reason to depart from the Interim Guidance's reliance on MIR comparisons to ethane as the basis for approving VOC exemption requests.

In summary, for both HFO–1234yf and HFO–1234ze, the EPA believes that these chemicals qualify as negligibly reactive with respect to their contribution to tropospheric ozone formation.

B. Likelihood of Risk to Human Health or the Environment

Additionally, we examined and present available information on the likelihood of risk to human health or the environment from increased use of the chemicals considered here. We believe that current regulation of these compounds under other EPA programs adequately protects human health and the environment.

The only currently known or potential uses for the chemicals being considered here are as substitutes for stratospheric ozone-depleting substances (ODS), and any such use is regulated under the SNAP program. Under SNAP, the EPA reviews all new substitutes for ODS and allows their use in specific applications where the overall risks to human health and the environment associated with their use are comparable to or less than those of other compounds used in the same manner.

After reviewing available information and public comments regarding its safety, health, and environmental risks and benefits under the SNAP program, the EPA issued a final approval on March 29, 2011 (76 FR 174888) for HFO–1234yf as an acceptable ODS substitute for use in MVAC, subject to specific use conditions, in place of CFC–12 and HFC–134a.[5] The use conditions in the SNAP approval have the effect of making it illegal to use HFO–1234yf in the air conditioning systems of heavy-duty trucks, refrigerated transport, or off-road vehicles such as agricultural or construction equipment. The use restrictions also have the effect of making use of the compound other than by manufacturers of automobiles and light-duty trucks or by commercial automotive service centers either illegal or highly unlikely.[6]

In the SNAP review, the EPA found that the use of HFO–1234yf in new passenger vehicle and light-duty truck MVAC systems, subject to the use conditions, does not present a significantly greater risk to human health and the environment compared to the currently approved MVAC alternatives. In summary, the EPA's SNAP review reached the following conclusions in support of this finding.

- Substituting HFO–1234yf for HFC–134a is environmentally beneficial from a climate change perspective as the global warming potential of HFO–1234yf is much lower (100 year GWP of 4 for HFO–1234yf vs. 100 year GWP of 1430 for HFC–134a). The EPA received a petition on May 7, 2010, (with a follow up petition on November 16, 2010) from the Natural Resources Defense Council, the Institute for Governance & Sustainable Development, and the Environmental Investigation Agency (a non-governmental organization) asking the EPA to remove HFC–134a from the list of acceptable substitutes under the SNAP program for use in motor vehicle air conditioners. The petitioners cited this difference in GWP as a reason for the EPA to approve their request.
- The use conditions of the final SNAP approval for HFO–1234yf provide protection against potential safety hazards related to the flammability of the compound, including potential exposure to hydrogen fluoride arising from thermal decomposition during a fire.
- Like HFC–134a, HFO–1234yf is not an ODS, so the substitution of the latter for the former will not affect stratospheric ozone concentrations.
- HFO–1234yf will not create significant impacts on ground level ozone or on local air quality.[7]
- The production of triflouroacetic acid from the atmospheric degradation of HFO–1234yf does not pose a significant risk of aquatic toxicity or ecosystem impacts.
- When used in accordance with the SNAP use restrictions, HFO–1234yf does not result in significantly greater risks to human health than the use of other available or potentially available substitutes.

The EPA conclusion in the final SNAP action regarding human health risks of HFO–1234yf was based on an extensive risk assessment and review of public comments. The EPA also noted that under the TSCA, the EPA had recently performed a pre-manufacture review for HFO–1234yf and adopted the SNUR (75 FR 65987, Oct. 27, 2010). The SNUR for HFO–1234yf requires reporting of additional information to the EPA before sale may begin for uses beyond air conditioning in new automobiles or commercial servicing of new automobiles built using HFO–1234yf, *i.e.,* the EPA must be given 90-days notice before HFO–1234yf products can be sold directly to consumers for the purpose of servicing, maintenance, and disposal. During these 90 days, the EPA can take further action to stop that marketing. This precautionary step was taken because of certain animal data indicating toxicity, and the possibility that home mechanics might accidentally expose themselves. Auto plant workers and repair shop professionals were expected to avoid exposure through work practices.[8]

Under the SNUR, the agency will: (a) Receive a Significant New Use Notice, or SNUN, of any person's intent to manufacture, import, or process HFO–1234yf for sale directly to consumers; (b) have an opportunity to review and evaluate data submitted with the SNUN; and (c) be able to regulate HFO–1234yf consumer products, if warranted. Any other potential applications beyond air conditioning in new automobiles or commercial servicing of new automobiles built using HFO–1234yf that may lead to significant exposures will also trigger the requirement for a SNUN, and would likely trigger further review under SNAP. The EPA believes these processes will provide adequate opportunity to address any health effects issues associated with possible increased use of HFO–1234yf.

The EPA's SNAP program has also issued determinations of acceptability for HFO–1234ze as an acceptable substitute for certain ODS in a number of foam blowing end uses, as a refrigerant in non-mechanical heat transfer, and as a propellant as stated in Section I. In this action, the EPA noted that HFO–1234ze is not ozone

[5] HFC–134a, which is not an ozone depleting substance, has already largely replaced CFC–12 in motor vehicle air conditioners.

[6] While use by vehicle owners is not illegal, the SNAP conditions prevent the sale of HFO–1234yf in containers of the size that would be attractive to individual vehicle owners, and also include requirements for special connecting equipment for the large containers that are legal for sale. In addition, as described later in this notice, under a recent Significant New Use Rule anyone planning to distribute HFO–1234yf for use by a consumer would be required to notify the EPA before doing so.

[7] In support of this conclusion, the final SNAP rule preamble cited two air quality modeling studies in addition to Luecken *et al.* These studies focused on air quality in Los Angeles, as a worst case scenario.

[8] The EPA considered the results of developmental testing available at the time of the final SNUR action to be of some concern, but not a sufficient basis to find HFO–1234yf unacceptable under the SNUR determination. As a result, The EPA requested additional toxicity testing and issued the SNUR for HFO–1234yf. The EPA has received and is presently reviewing the results of the additional toxicity testing. The EPA continues to believe that HFO–1234yf, when used in new automobile air conditioning systems in accordance with the use conditions under the SNAP rule, does not result in significantly greater risks to human health than the use of other available substitutes.

depleting, the GWP for HFO–1234ze is significantly lower than the GWPs for the ozone-depleting substances it will replace, HFO–1234ze is not flammable, and the toxicity risks of HFO–1234ze are low. For these reasons, the EPA found that HFO–1234ze will not pose a greater overall risk to human health and the environment than the other substitutes acceptable in these end uses.

C. Conclusions

In summary, for both HFO–1234yf and HFO–1234ze, the EPA believes that (a) these chemicals qualify as negligibly reactive with respect to their contribution to tropospheric ozone formation, and (b) any non-tropospheric ozone related risks associated with potential increased use are adequately addressed by other existing programs and policies. We also believe that the much lower global warming potential of HFO–1234yf compared to the compound HFC–134a for which it will substitute, as described in Section III.B, is an additional reason to approve the HFO–1234yf petition in particular, given that applying the Interim Guidance itself supports such approval. We invite the public to submit comments and additional information relevant to the issue of these compounds' overall risks and benefits to human health and the environment, and on whether such information should be considered in connection with the decision to grant an exemption from the regulatory definition of VOC.

IV. Proposed Action

The EPA is responding to the petitions by proposing to revise its definition of VOC at 40 CFR 51.100(s) to add HFO–1234yf and HFO–1234ze to the list of compounds that are exempt from the regulatory definition of VOC because they are negligibly reactive on the basis that they are less reactive than ethane on a mass MIR basis. If an entity uses or produces any of these two compounds and is subject to the EPA regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the ozone NAAQS, then these two compounds will not be counted as a VOC in determining whether these regulatory obligations have been met. This action may also affect whether any of these two compounds are considered as VOCs for state regulatory purposes to reduce ozone formation, if a state relies on the EPA's definition of VOC. States are not obligated to exclude from control as a VOC those compounds that the EPA has found to be negligibly reactive. However, if this action is made final, states may not take credit for controlling these compounds in their ozone control strategies.

V. Statutory and Executive Order Reviews

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

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is treated as a significant regulatory action because some may view it as raising novel legal or policy issues arising out of legal mandates. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

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). It does not contain any recordkeeping or reporting requirement.

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 proposed 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 this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any state, local or Tribal governments, or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action 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.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action addresses the exemption of a set of chemical compounds from the VOC definition. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this proposed rule, the EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. While this proposed rule is not subject to the Executive Order, the EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent these chemical compounds may affect children's health. The EPA has placed the available data regarding the health effects of HFO–1234yf in Docket No. EPA–HQ–OAR–2003–0032 which is the docket for the SNUR for this compound.

The public is invited to submit comments or identify peer-reviewed studies and data, of which the EPA may not be aware, that assess results of early life exposure to the chemical compounds herein.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes to revise the EPA's definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA.

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, section 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 (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.

The 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 will not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2011.

Lisa P. Jackson,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51, Subpart F, continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

§ 51.100 [Amended]

2. Section 51.100 is amended at the end of paragraph (s)(1) introductory text by removing the words ''and perfluorocarbon compounds which fall into these classes:'' and adding in their place a semi-colon and the words ''*trans*-1,3,3,3-tetrafluoropropene; 2,3,3,3-tetrafluoropropene and perfluorocarbon compounds which fall into these classes:''.

[FR Doc. 2011–26768 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0314; FRL–9479–9]

Approval and Promulgation of Implementation Plans; Oklahoma; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take action on portions of State Implementation Plan (SIP) revisions submitted by the State of Oklahoma to address Clean Air Act requirements that prohibit air emissions which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards), the 1997 fine particulate matter ($PM_{2.5}$) NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is basing these proposed actions on the final determinations concluded within the Cross State Air Pollution Rule (CSAPR or Transport Rule) and proposed determination within the Supplemental Notice of Proposed Rulemaking (SNPR). EPA is proposing to disapprove, or in the alternative, approve the portion of the submittal demonstrating Oklahoma does not interfere with maintenance of the ozone NAAQS in other states. EPA intends to finalize approval or disapproval based on its final determination for the SNPR regarding Oklahoma for the ozone NAAQS. EPA is also proposing to approve the portion of the submittal demonstrating Oklahoma does not contribute significantly to nonattainment of the ozone NAAQS in other states. Finally, EPA is proposing to approve the portions of the submittals addressing Oklahoma's impacts for the $PM_{2.5}$ NAAQS in other states. This action is being taken under section 110 of the CAA.

DATES: Written comments must be received on or before November 16, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0314, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

• *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2007–0314. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The state submittal is also available for public inspection during official business hours, by appointment, at the Oklahoma Department of Environmental Quality, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; e-mail address *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. Background
A. Clean Air Act Background
B. Oklahoma's Submittals
C. EPA's Analysis and Actions for the Cross State Air Pollution Rule
II. Proposed Action
A. Disapproval or Approval of the Submittal for the Interference With Maintenance Requirement for the 1997 Ozone NAAQS
B. Approval of the Submittal for the Significant Contribution to Nonattainment Requirement for the 1997 Ozone NAAQS
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I. Background

A. Clean Air Act Background

Section 110(a) of the Clean Air Act (CAA) requires each state to develop a state implementation plan (SIP) that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). We establish NAAQS under section 109 of the CAA. Currently, the NAAQS address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

SIPs can be extensive, containing state regulations or other enforceable measures and various types of supporting information, such as emissions inventories, monitoring networks, and modeling demonstrations. The ''good neighbor'' provisions in section 110(a)(2)(D)(i) require each SIP to prohibit emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States. It should be noted that this proposed rulemaking action addresses only those portions of Oklahoma's May 1, 2007, and April 5, 2011, submittals, which address the 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment or interference with maintenance in another State with respect to the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. At this time, EPA is not taking action on any additional requirements of section 110(a)(2)(D)(i) or on any other portions of Oklahoma's May 1, 2007, and April 5, 2011, submittals.[1]

Within 3 years of our promulgation of a new or revised NAAQS, States are required to update or revise the SIP and submit the revisions to us for approval and incorporation into the Federally enforceable SIP (CAA 110(a)(1)). These plans should address, among other things the requirements of Section 110(a)(2)(D)(i). In 1997, we revised the NAAQS for ozone and particulate matter. For ozone we established new 8-hour standards of 0.08 parts per million (62 FR 38856). For particulate matter we

[1] Previously we took the following actions on the May 1, 2007, Oklahoma submittal for the 1997 ozone and $PM_{2.5}$ NAAQS: (1) We approved the portion demonstrating Oklahoma emissions do not interfere with prevention of significant deterioration measures in any other state (November 26, 2010, 75 FR 72695); (2) we proposed to partially approve and partially disapprove the portion demonstrating that Oklahoma emissions do not interfere with visibility protection measures required in any other state (March 22, 2011, 76 FR 16168).

established new annual average and 24-hour standards for fine particles, using particulate matter less than 2.5 microns ($PM_{2.5}$) as the indicator (62 FR 38652). In 2006, we revised the $PM_{2.5}$ NAAQS by decreasing the level of the 24-hour standard from 65 micrograms per cubic meter (μg/m³) to 35 μg/m³. We retained the annual $PM_{2.5}$ NAAQS of 15 μg/m³. This action is being taken in response to the promulgation of these NAAQS.

B. Oklahoma's Submittals

On May 1, 2007, the State of Oklahoma submitted a SIP revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 ozone and $PM_{2.5}$ NAAQS. On December 5, 2007, the State submitted supplemental information.[2] On April 5, 2011, the State submitted a letter certifying that their SIP meets the requirements of CAA section 110(a)(2), including 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. The submittals document the State's assessments that Oklahoma emissions will not contribute significantly to nonattainment, or interfere with maintenance, in any other State for the 1997 ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS. The submittals are available electronically through the *http://www.regulations.gov* Web site (Docket No. EPA–R06–OAR–2007–0314).

Consistent with EPA guidance at the time and EPA's approach in the Clean Air Interstate Rule (CAIR), the State's May 1, 2007, submittal focused primarily on whether emissions from Oklahoma sources significantly contribute to nonattainment of the 1997 ozone and $PM_{2.5}$ NAAQS in other states.[3] The State did not evaluate whether Oklahoma emissions interfere with maintenance of these NAAQS in other states separately from significant contribution to nonattainment in other states. Instead, the state presumed that if Oklahoma sources were not significantly contributing to violations of the NAAQS in other states, then no further specific evaluation was necessary for purposes of the interfere with maintenance element of section 110(a)(2)(D). However, CAIR was remanded to EPA, in part because the court found that EPA had not correctly addressed whether emissions from sources in a state interfere with maintenance of the standards in other states.[4] Therefore, EPA must evaluate the May 1, 2007, Oklahoma submittal in light of the decision of the court.

C. EPA Analyses and Actions for the Cross State Air Pollution Rule

On August 2, 2010, we proposed the ''Cross State Air Pollution Rule'' (CSAPR or Transport Rule) for State emissions that contribute significantly to nonattainment in, or interfere with maintenance by, downwind states for the 1997 ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS (75 FR 45210). The proposal responded to the court remand of CAIR in part by independently analyzing whether a state's emissions interfere with maintenance of the 1997 ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS. We proposed to include Oklahoma in the CSAPR for the 1997 ozone NAAQS. Our analysis for the proposal identified Oklahoma emissions as significantly contributing to nonattainment and interfering with maintenance of the 1997 ozone NAAQS in the Dallas/Fort Worth, Texas area. Furthermore, our analysis in the proposed CSAPR also found that Oklahoma emissions did not significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS. The comment period for this proposed rule closed on October 1, 2010.

In the final CSAPR, published in the **Federal Register** on August 8, 2011, EPA made a final determination that Oklahoma does not significantly contribute to nonattainment and interfere with maintenance with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS in other states (76 FR 48208). However, EPA's analysis in the final CSAPR also demonstrated that six states, including Oklahoma, should be required to reduce ozone-season NOx emissions to reduce ozone impacts at certain locations identified as maintenance receptors that were not identified in the modeling conducted for the proposal. This analysis conducted for the final CSAPR found Oklahoma emissions interfering with maintenance of the 1997 ozone NAAQS in Allegan County, Michigan, but not significantly contributing to nonattainment of the 1997 ozone NAAQS in any other state. In the proposed and final CSAPR, EPA explicitly gave independent meaning to the ''interfere with maintenance'' prong of section 110(a)(2)(D)(i)(I) by evaluating contributions to identified maintenance receptors that may have difficulty maintaining the NAAQS in the future. EPA found in the final CSAPR analysis that Oklahoma emissions contribute to maintenance problems at the Allegan County, Michigan maintenance receptor, and absent the Allegan County maintenance receptor Oklahoma would not be covered by the CSAPR ozone-season program. Based on this analysis, we published a supplemental notice of proposed rulemaking (SNPR) to implement the ozone-season NOx program in the final CSAPR as the FIP for Oklahoma to address emissions identified as interfering with maintenance with respect to the 1997 ozone NAAQS (July 11, 2011, 76 FR 40662). In the SNPR, EPA took comment on whether there were errors in the Agency's application of the CSAPR methodologies with respect to Oklahoma and the 1997 ozone NAAQS, and did not take comment on any aspect of the final CSAPR. The comment period for this rule closed on August 22, 2011.

The methodology used to analyze the impact of Oklahoma emissions with respect to the 1997 ozone NAAQS is described in detail in the preamble to the final CSAPR and in the Technical Support Documents entitled ''Air Quality Modeling Final Rule TSD'' and ''Significant Contribution and State Emission Budgets Final Rule TSD''. These documents can be found in the electronic docket for the CSAPR and are available through the *http://www.regulations.gov* Web site (Docket No. EPA–HQ–OAR–2009–0491).

In this notice, EPA is proposing to take action on the basis of determinations that have been or will be made in other final agency actions that were taken after providing a full opportunity for notice and comment. Therefore, in this notice, EPA is taking comment only on its conclusions that the determinations with respect to Oklahoma made in the final CSAPR and the determination with respect to Oklahoma that will be made in final action on the SNPR provide a basis for the actions proposed in this notice. EPA provided an opportunity for public comment, in the SNPR, on its proposed determination that Oklahoma interferes with maintenance of the 1997 ozone NAAQS because it is linked to an ozone maintenance receptor identified in the modeling for the final CSAPR. EPA is not taking additional comment on that proposed determination. EPA also provided an ample opportunity to comment, during the CSAPR rulemaking, on the determinations made

[2] The supplemental information provided an assessment of Oklahoma's impact on Kenosha County, Wisconsin, and Cook County, Illinois. Kenosha County, Wisconsin is designated as nonattainment for the 1997 ozone NAAQS. Cook County, Illinois is designated as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS.

[3] On August 15, 2006, we issued our ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards''.

[4] For more discussion on the court remand of CAIR please see our August 8, 2011, CSAPR (76 FR 48208).

in the final CSAPR on Oklahoma's significant contribution to nonattainment or interference with maintenance with respect to the 1997 and the 2006 $PM_{2.5}$ NAAQS. EPA is not taking comment on these or any other determinations made in the final CSAPR, or reopening any aspect of CSAPR or the SNPR for public comment. EPA is also not taking comment on any aspect of the final CSAPR, including the methodology used to identify maintenance receptors or the methodology used to identify Oklahoma's specific contribution or interference with maintenance. EPA received numerous comments on the proposed CSAPR and on the associated Notices of Data Availability, and the SNPR, and considered, (or, in the case of the SNPR, is considering), all comments received during the comment periods for these actions.

II. Proposed Action

In this action, EPA is taking comment only on its conclusions that the final CSAPR and the SNPR provide a basis for proposing: (1) Disapproval, and in the alternative proposing approval, for the portion of the Oklahoma SIP revision addressing the interference with maintenance requirement for the 1997 ozone NAAQS; (2) approval of the portion of the Oklahoma SIP revision addressing the significant contribution to nonattainment requirements for the 1997 ozone NAAQS; and (3) approval of the portion of the Oklahoma SIP revision that addresses the significant contribution to nonattainment or interference with maintenance requirements for the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS.

A. Disapproval or Approval of the Submittal for the Interference With Maintenance Requirement for the 1997 Ozone NAAQS

We are proposing to disapprove and, in the alternative, proposing to approve the portion of the SIP revision submitted on May 1, 2007, to address the interference with maintenance requirement for the 1997 8-hour ozone NAAQS. We intend that our final action (disapproval or approval) will be based on final action for Oklahoma in the supplemental Cross State Air Pollution rule discussed above. We intend to disapprove this portion of the SIP revision if, in the final supplemental CASPR rule, we finalize our determination that Oklahoma emissions are interfering with maintenance of the 1997 ozone NAAQS. EPA is in the course of reviewing and preparing responses to the comments submitted on the SNPR regarding EPA's modeling and the adjustments made to its technical analyses for the final CSAPR. If this review alternatively indicates that Oklahoma should not be subject to and covered by the final supplemental rule, EPA will take final action to approve this portion of Oklahoma's SIP revision for the transport element of 110(a)(2)(D)(i)(I) that Oklahoma emissions are not interfering with maintenance of the 1997 ozone NAAQS. As discussed previously, we are not reopening for comment the analyses done for the final CSAPR nor the SNPR.

B. Approval of the Submittal for the Significant Contribution to Nonattainment Requirement for the 1997 Ozone NAAQS

We are proposing to approve the portion of the SIP revision submitted on May 1, 2007, to address the significant contribution to nonattainment requirement for the 1997 8-hour ozone NAAQS. Our proposal is based on our determination concluded within the final CSAPR that Oklahoma emissions do not contribute significantly to nonattainment of the 1997 ozone NAAQS. As discussed previously, we are not reopening for comment the analyses done for the final CSAPR nor the SNPR.

C. Approval of the Submittals for the 1997 and 2006 $PM_{2.5}$ NAAQS

We are proposing to approve the portions of the SIP revisions submitted on May 1, 2007, and April 5, 2011, to address the significant contribution to nonattainment or interference with maintenance requirements for the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. Our proposal is based on our determination concluded within the final Cross State Air Pollution rule that Oklahoma emissions do not contribute significantly to nonattainment, or interfere with maintenance for the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. As discussed previously, we are not reopening for comment the analyses done for the final CSAPR nor the SNPR.

III. 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 and disapprove. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

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

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP action under section 110 of the CAA will not in-and-of itself create any new information collection burdens but simply approves or disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP action under section 110 of the CAA will not in-and-of itself create any new requirements but simply approves or disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule.

The fact that the CAA prescribes that various consequences (*e.g.,* emission limitations) may or will flow from this action does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve or disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves or disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP submittals EPA is proposing to approve or disapprove would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action. Consistent with EPA policy, EPA nonetheless is offering consultation to Tribes regarding this rulemaking action. EPA will respond to relevant comments in the final rulemaking action.

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 action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP action under section 110 of the CAA will not in-and-of itself create any new regulations but simply approves or disapproves certain State requirements for inclusion into the SIP.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to approve or disapprove certain State requirements for inclusion into the SIP under section 110 of the CAA and 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

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

Dated: October 6, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–26763 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 76, No. 200

Monday, October 17, 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

Submission for OMB Review; Comment Request

October 12, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Food Distribution Forms.

OMB Control Number: 0584–0293.

Summary of Collection: The Food Distribution Programs of the Department of Agriculture assist American farmers and needy people by purchasing commodities and delivering them to State agencies that in turn, distribute them to organizations for use in providing food assistance to those in need. The commodities help to meet the nutritional needs of: (a) Children from preschool age through high school USDA Child Nutrition Programs and in nonprofit summer camps, (b) needy person in households on Indian reservations, (c) needy household in the nuclear affected islands, (d) needy persons served by charitable institutions, (e) pregnant and breastfeeding women, infants, and children, and elderly persons, (f) low-income, unemployed or homeless people provided foods through household distributions or meals through soup kitchens, (g) pre-school, school-age children, elderly and functionally impaired adults enrolled in child and adult day care centers, (h) victims of Presidential-declared disasters and other situation of distress. The Food and Nutrition Service (FNS) will collect information from state and local agencies using several FNS forms.

Need and Use of the Information: FNS will collect the following information from state and local agencies: (a) Number of households or meals served in the programs, (b) the kinds of commodities most acceptable to recipients, (c) the quantities of foods ordered and where the food is to be delivered, (d) verification of the receipt of a food order, and (e) the amounts of commodities in inventory.

Description of Respondents: Not-for-profit institutions; Individual or households; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 469,041.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Semi-annually; Monthly; Annually.

Total Burden Hours: 1,079,173.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–26817 Filed 10–14–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 11, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Forest Service

Title: 36 CFR part 228, Subpart A—Locatable Minerals.

OMB Control Number: 0596–0022.

Summary of Collection: The United States Mining Law of 1982, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on 192 million acres of National Forest set up by proclamation from the public domain. It gives individuals the right to search for and extract valuable mineral deposits of locatable minerals and secure title to the lands involved. Recording that claim in the local courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to claim for further prospecting, mining or necessary related activities, subject to the other laws and applicable regulations. The purpose of the regulations at 36 CFR part 228, subpart A, is to set some specific rules and procedures through which use of the surface of National Forest System lands in connection with mineral operations authorized by the United States mining laws shall be conducted so as to minimize adverse environmental impacts on surface resources. The Forest Service (FS) will collect information using form FS 2800–5, Plan of Operations for Mining Activities on National Forest System Lands.

Need and Use of the Information: FS will collect information requirements for a Notice of Intent to include the name, address, and telephone number of the operator; the area involved; the nature of the proposed operations; the route of access to the area of operations and the method of transport. The information requirements for a Plan of Operations includes: the name and legal mailing address of the operators; a description of the type of operations proposed; a description of how it would be conducted; a description of the type and standard of existing/proposed roads/access route; a description of the means of transportation to be used; a description of the period during which the proposed activity will take place; and measures to meet the environmental protection requirements. The information requirements for a cessation of operation include: verification to maintain the structures, equipment and other facilities; expected reopening date; estimate of extended duration of operations; and maintenance of the site, structure, equipment and other facilities during nonoperating periods.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,162.

Frequency of Responses: Reporting: Other (approved for a given period).

Total Burden Hours: 7,021.

Forest Service

Title: Equal Opportunity Compliance Review Record—Federally Assisted Programs.

OMB Control Number: 0596–0215.

Summary of Collection: All Federal agencies and the entities receiving Federal financial assistance are prohibited from discriminating in the delivery of programs and services. Agencies must comply with equal opportunity laws, Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments Act of 1972; The Age Discrimination Act of 1975, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Executive orders prohibiting discrimination in the delivery of all programs and services to the public. The Federal government is required to conduct periodic program compliance reviews of recipients of Federal financial assistance to ensure they are adhering to the nondiscrimination statutes. Forest Service personnel integral to the pre-award and post-award process will collect this information during face-to-face meetings or telephone interviews.

Need and Use of the Information: Forest Service will use form FS–1700–6, ''Equal Opportunity Compliance Review Record'' to collect the information and document assisted program compliance. Data collected includes information on actions taken by recipients to ensure the public receives service without discrimination or barriers to access and the recipients' employees understand their customer service responsibilities. The information collected is for internal use only and is utilized to establish and monitor civil rights compliance.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 9,500.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 9,658.

Forest Service

Title: Federal Excess Personal Property.

OMB Control Number: 0596–0218.

Summary of Collection: The Federal Property Services and Administrative Assistance Act of 1949 and the Cooperative Forestry Assistance Act of 1978, as amended, authorize the Forest Service (FS) to loan federally owned property to state cooperators to use in fighting fires and providing emergency services. The Federal Excess Personal Property (FEPP) program administers the loan FS Fire and Aviation Management fire-control stock to states. The FEPP program will provide FS officials with updated information on the condition of property loaned to state and territory cooperators. FS property management technicians will collect the information from the Forest Service Federal Excess Property Management Information System (FEPMIS) database and enter it into a National Finance Center database (PROP), as required by Federal Property Management Regulations.

Need and Use of the Information: State agencies will use the FEPMIS database to submit information regarding property details, including manufacturer, model, year of manufacture, acquisition date when an item is acquired or no longer needed, acquisition value, Federal property identification number, serial number, condition of property, and the location of property and user of the property. The database will also allow FS to manage inventory. Access to the database is limited to those with access authorized by FS Management Officers working in the Fire and Aviation staff.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 540.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–26748 Filed 10–14–11; 8:45 am]

BILLING CODE 3410–11–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 10 a.m.–12:30 p.m. November 4, 2011.

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2010–2011; (2) Review the Low-Level Radioactive Waste (LLRW)

Disposal and Storage information for 2010; (3) Consider a proposed budget for fiscal year 2012–2013; (4) Review recent developments regarding LLRW management and disposal; and (5) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be announced at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Rich Janati, Administrator of the Commission, at 717–787–2163.

Rich Janati,

Administrator, Appalachian Compact Commission.

[FR Doc. 2011–26294 Filed 10–14–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Membership of the Economic Development Administration Performance Review Board

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of membership on the Economic Development Administration's Performance Review Board membership.

SUMMARY: In accordance with 5 U.S. C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ronda L. Holbrook, U.S. Department of Commerce, Human Resources Operations Center (DOCHROC), Office of Executive Resources Operations, 14th and Constitution Avenue, NW., Room 7419, Washington, DC 20230, at (202) 482–5243.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S. C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 17, 2011. The name, position title, and type of appointment of each member of EDA's Performance Review Board are set forth below by organization:

1. *Barry Bird,* Chief Counsel for Economic Development, EDA, career, serves as Chair.
2. *John C. Connor,* Director, Office of White House Liaison, Office of the Secretary (OS), non-career, new member.
3. *Gordon T. Alston,* Deputy Director for Financial Management, OS, Office of the Chief Financial Officer and Assistant Secretary for Administration, career.
4. *Edith J. McCloud,* Associate Director for Management, Minority Business Development Agency, career.

Dated: October 11, 2011.

Susan Boggs,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2011–26742 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Membership of the Bureau of Industry and Security Performance Review Board

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Membership on the Bureau of Industry and Security's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce Human Resources Operations Center (DOCHROC), Office of Staffing, Recruitment, and Classification/Executive Resources Operations, 14th and Constitution Avenue, NW., Room 7419, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 17, 2011. The name, position title, and type of appointment of each member of BIS's Performance Review Board are set forth below by organization:

Department of Commerce, Office of the Secretary

Michael A. Levitt, Assistant General Counsel for Legislation and Regulations, Office of General Counsel, Career SES.

Department of Commerce, Bureau of Industry and Security

Daniel O. Hill, Deputy Under Secretary, Career SES, Chairperson.
Matthew S. Borman, Deputy Assistant Secretary for Export Administration, Career SES.
Gay Shrum, Chief Financial Officer and Director of Administration, Career SES.
Donald G. Salo, Deputy Assistant Secretary for Export Enforcement, Career SES, (*New Member*).

Dated: October 11, 2011.

Susan Boggs,

Director, Office of Staffing, Recruitment, and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2011–26740 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Changes to the Membership of the Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Performance Review Board Membership.

SUMMARY: The regulations at 5 CFR 430.310 require agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. In accordance with those regulations, this notice announces changes to the membership of the International Trade Administration's Performance Review Board.

DATES: *Effective Date:* The changes made to the Performance Review Board is effective October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ronda L. Holbrook, U.S. Department of Commerce, Human Resources Operations Center (DOCHROC), Office of Executive Resources Operations, 14th and Constitution Avenue, NW., Room 7419, Washington, DC 20230, at (202) 482–5243.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA) published its list of Performance Review Board appointees pursuant to the regulations at 5 CFR 430.310 (74 FR 51261). The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service.

ITA publishes this notice to announce changes to the Performance Review Board's membership. The name, position title, and type of appointment of each member of ITA's:

Performance Review Board Are Set Forth Below By Organization

1. *John M. Andersen,* Deputy Assistant Secretary for Market Access and Compliance, ITA, career, new member, serves as Chair.
2. *Bryan J. Erwin,* Director Advocacy Center, ITA, non-career, new member.
3. *Patricia M. Sefcik,* Chief Financial Officer and Director of Administration, ITA, career.
4. *Christian Marsh,* Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ITA, career, new member.
5. *Praveen M. Dixit,* Deputy Assistant Secretary for Industry Analysis, ITA, career, new member.
6. *Ellen Herbst,* Senior Advisor for Policy and Program Integration, Office of the Secretary, career, new member.

Dated: October 11, 2011.

Susan Boggs,

Director, Office of Staffing, Recruitment, and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2011–26739 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA763

New England Fishery Management Council; Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Advisory Panel, Recreational Advisory Panel and Groundfish Oversight Committee will hold three meetings to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings will be held November 1–2, 2011. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: These meetings will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; *telephone:* (508) 747–4900 and *fax:* (508) 746–5386. For specific locations, see **SUPPLEMENTARY INFORMATION.**

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 schedule and agenda for the following three meetings are as follows:

Council Meetings: Locations, Schedules, and Agendas

1. Tuesday, November 1, 2011 Beginning at 9 a.m.—Groundfish Advisory Panel

The Groundfish Advisory Panel (GAP) will meet to develop advice that will be considered by the Groundfish Committee at a November 2, 2011 meeting, and by the full Council at its November 2011 meeting. The GAP will review draft Framework Adjustment 47 to the Northeast Multispecies Fishery Management Plan (FW 47) and provide recommendations for preferred alternatives. FW 47 will modify specifications for the fishery and consider changes to accountability measures. They will also consider draft groundfish management priorities for 2012 and may develop recommendations for those priorities. The GAP may review information from a sector workshop in October and may prioritize the issues raised at that workshop.

2. Tuesday, November 1, 2011 Beginning at 9 a.m.—Recreational Advisory Panel

The Recreational Advisory Panel (RAP) will meet to develop advice that will be considered by the Groundfish Committee at a November 2, 2011 meeting, and by the full Council at its November 15–17, 2011 meeting. The RAP will review information on fishing year 2010 catches and will develop advice on accountability measures (AMs) for any stocks where catches exceeded the recreational fishery annual catch limit. Indications are that an AM will be needed for Gulf of Maine haddock. The RAP will also review groundfish management priorities for 2012 and may develop recommendations for those priorities.

3. Wednesday, November 2, 2011 Beginning at 9 a.m.—Groundfish Oversight Committee

The Groundfish Committee will meet to continue development of Framework Adjustment 47 to the Northeast

Multispecies Fishery Management Plan (FW 47) and other issues. During its deliberations the Committee will consider the advice of the Groundfish Advisory Panel and the Recreational Advisory Panel. FW 47 will modify specifications for the fishery and consider changes to accountability measures, as well as adjust other measures. Changes to the specifications could include the adoption of sub-annual catch limits that limit the catches of Southern New England/Mid-Atlantic Bight (SNE/MAB) windowpane and/or SNE winter flounder by the scallop fishery, and SNE/MAB windowpane by other fisheries. The Committee will review draft FW 47 and may develop recommendations for preferred alternatives that will be presented to the Council. The Committee will review groundfish management priorities for 2012 and will develop a Committee recommendation on these priorities. The Committee will also consider information from a sector review workshop planned for October and may prioritize the issues identified at the workshop that need to be addressed to improve sector performance. Finally, the Committee will develop advice on any accountability measures that may be needed for the recreational fishery (indications are that an AM will be needed for Gulf of Maine haddock). Committee recommendations will be presented to the Council etc. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. 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

These meetings are 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 working days prior to the meeting date.

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

Dated: October 12, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–26758 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA670

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops; Correction

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

ACTION: Notice of public workshops; Correction.

SUMMARY: NMFS announces that the address for the Atlantic Shark Identification workshop scheduled for November 17, 2011, in Charleston, SC, has been changed. This workshop was originally announced on September 27, 2011. The new address remains within the vicinity of Charleston, SC, but the workshop will be held at another venue. The workshop time and date remain unchanged: 12 p.m. to 4 p.m. on November 17, 2011. The October and December workshop locations remain unchanged. Atlantic Shark Identification workshops are mandatory for Atlantic Shark Dealer permit holders or their proxies. Additional free workshops will be held in 2011 and 2012.

DATES: The address for the Atlantic Shark Identification Workshop scheduled for November 17, 2011, in Charleston, SC, has changed. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The address of the Atlantic Shark Identification workshop in Charleston, SC, has been changed. See **SUPPLEMENTARY INFORMATION** for further details.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson of the Highly Migratory Species Management Division at (727) 824–5399.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** (Doc. 2011–24835) of September 27, 2011, on page 59661, in the third column, correct the location of the second Atlantic Shark Identification workshop listed under the heading ''Workshop Dates, Times, and Locations'' to read:

''2. November 17, 2011, 12 p.m.–4 p.m., Hampton Inn & Suites, 1104 Isle of Palms Connector, Mt. Pleasant, SC 29464.''

Dated: October 12, 2011.

Steven Thur,

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

[FR Doc. 2011–26794 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Applications for Vacant Seats on the Flower Garden Banks National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following six vacant seats on the Flower Garden Banks National Marine Sanctuary Advisory Council: recreational diving, oil and gas operations, recreational fishing, commercial fishing, research and education. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's Charter.

DATES: Applications are due by December 9, 2011.

ADDRESSES: Application kits may be obtained from Jennifer Morgan, NOAA–Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Bldg. 216, Galveston, TX 77551 or downloaded from the sanctuary Web site *http://flowergarden.noaa.gov.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jennifer Morgan, NOAA–Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Bldg. 216, Galveston, TX 77551, 409–621–5151 ext. 103, *Jennifer.Morgan@noaa.gov.*

SUPPLEMENTARY INFORMATION: Located in the northwestern Gulf of Mexico, the Flower Garden Banks National Marine Sanctuary includes three separate areas, known as East Flower Garden, West Flower Garden, and Stetson Banks. The Sanctuary was designated on January 17, 1992. Stetson Bank was added to the Sanctuary in 1996. The Sanctuary Advisory Council will consist of no more than 21 members; 16 nongovernmental voting members and 5 governmental non-voting members. The Council may serve as a forum for consultation and deliberation among its members and as a source of advice to the Sanctuary manager regarding the management of the Flower Garden Banks National Marine Sanctuary. Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 4, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–26685 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Membership of the National Telecommunications and Information Administration's Performance Review Board

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

ACTION: Notice of Membership on the National Telecommunications and Information Administration's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S. C. 4314 (c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce Human Resources Operations Center (DOCHROC), Office of Staffing, Recruitment, and Classification/Executive Resources Operations, 14th and Constitution Avenue, NW., Room 7419, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S. C. 4314 (c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 17, 2011. The name, position title, and type of appointment of each member of NTIA's Performance Review Board are set forth below by organization:

Department of Commerce, International Trade Administration (ITA)

Renee A. Macklin, Chief Information Officer, ITA, Career SES.

Department of Commerce, National Telecommunications and Information Administration

Leonard M. Bechtel, Chief Financial Officer and Director of Administration, Career SES, Chairperson, (*New Member*).

Bernadette A. McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications, Career SES.

Karl B. Nebbia, Associate Administrator for Spectrum Management, Career SES.

Alan W. Vincent, Associate Administrator for Telecom Sciences and Director Institute for Telecom Sciences, Career SES.

Dated: October 11, 2011.

Susan Boggs,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2011–26736 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2011–0056]

Request for Comments on Intellectual Property Enforcement in China

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for written submissions from the public.

SUMMARY: As China has become a major trading partner for the United States, U.S. rights holders are increasingly seeking to protect and enforce their intellectual property (IP) in that country. China's patent and trademark offices are now among the largest in the world in terms of filings, and its IP enforcement system is being increasingly utilized by U.S. rights holders. Ensuring that the Chinese IP system works in a fair and timely manner for U.S. innovators is a top priority for the U.S. Government.

To that end, the United States Patent and Trademark Office (USPTO), in collaboration with other U.S. Government agencies, is leading an effort to identify and assess the challenges U.S. inventors are facing with China's judicial and administrative patent enforcement systems. The USPTO would like to address the concerns of rights holders by working with them to identify problems—such as difficulties in gathering evidence, meeting evidentiary requirements, protecting proprietary information, obtaining adequate damages, and enforcing preliminary injunctions—to then find ways to address these issues with the Chinese Government.

As part of this effort, the USPTO, in coordination with the White House Intellectual Property Enforcement Coordinator (IPEC), has conducted a series of roundtables to obtain the views of diverse members of the patent community who have first-hand experience enforcing their patents in China. Roundtables were held on July 19, 2011, in Washington, DC; on July 26, 2011, in Beijing, China; on July 29, 2011, in Shanghai, China; and on August 1, 2011, in Guangzhou, China.

Topics for discussion included: (1) Acquisition and enforcement of utility model and design patents; (2) evidence collection and preservation in Chinese courts; (3) obtaining damages and injunctions; (4) enforceability of court orders; and (5) administrative patent enforcement.

To ensure that the USPTO receives a wide array of views, the USPTO would like to invite any member of the public to submit written comments on China's patent enforcement system, including, but not limited to, the five specific issues listed above. Examples of first-hand experience using China's patent enforcement system, and recommendations on ways to improve the system, are encouraged. Based on these comments, the USPTO intends to produce a report that details the patent enforcement landscape in China and identifies any challenges faced by U.S. innovators, together with recommendations for improving the system.

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

Dates and Times: The deadline for receipt of written comments for consideration by the USPTO on the five categories of issues listed above, or on any other issues pertaining to China's patent enforcement system, is November 4, 2011.

ADDRESSES: Written comments should be sent by electronic mail message via the Internet addressed to *IP.Policy@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop OPEA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, *Attn:* Elizabeth Shaw. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet. If you would like to submit confidential business information that supports your comments, please contact Elizabeth Shaw at *elizabeth.shaw2@uspto.gov* or 571–272–8494.

The written comments will be available for public inspection by appointment only at the Office of Policy and External Affairs in the Executive Library located in the Madison West Building, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, 22314. Contact: Elizabeth Shaw at *elizabeth.shaw2@uspto.gov* or 571–272–8494.

Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw, Office of Policy and External Affairs, by phone 571–272–8494, by facsimile to 571–273–0123, by e-mail at *elizabeth.shaw2@uspto.gov* or by mail addressed to: Mail Stop OPEA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, ATTN: Elizabeth Shaw.

SUPPLEMENTARY INFORMATION: As the second largest economy in the world, China continues to attract U.S. businesses interested in tapping into its growing domestic demand and rapid market growth. As U.S. innovators continue to export their products and services into China, the effective functioning of China's patent enforcement system will be critical to the success of U.S. innovators in China.

The State Intellectual Property Office (SIPO) of the People's Republic of China is now one of the largest patent office in the world in terms of patent filings. It received 1.2 million patent applications in 2010. Despite an increase in the number of patents obtained in China, the number of patent cases filed in Chinese courts has remained relatively unchanged since 2005.

Patent enforcement in China comprises two mechanisms—judicial and administrative. Concerns over China's judiciary (such as lack of adequate discovery powers, evidentiary burdens, and low damages rewards) have been cited as reasons why U.S. and foreign companies do not file more patent suits in Chinese courts. Indeed, according to China's Supreme People's Court, only about 4 percent of civil IP cases in China involve foreign parties. Furthermore, China issues utility model and design patents that do not undergo substantive examination and have complicated actual inventors' pursuit and enforcement of their IP rights in China.

In addition to judicial patent enforcement in Chinese courts, patent enforcement in China can also occur administratively in SIPO's provincial IP offices, which have the authority to issue cease-and-desist orders, seize infringing goods, and exact penalties against infringers. The limited investigative powers of the agency and ineffectual penalties have been cited as reasons for the weakness of this enforcement route.

The USPTO has conducted a series of roundtables to evaluate U.S. rights holders' views of China's patent enforcement system. These views have included first-hand experiences enforcing patent rights in China, defending against charges of infringement in China, as well as suggestions for future improvements to the system. The USPTO heard from a number of roundtable participants from diverse sources including practitioners, industry, trade organizations, academia, and government.

To ensure that the USPTO receives a wide array of views on China's patent enforcement system, the USPTO is now seeking written comments on patent enforcement issues in China, including but not limited to (1) acquisition and enforcement of utility model and design patents; (2) evidence collection and preservation in Chinese courts; (3) obtaining damages and injunctions; (4) enforceability of court orders; and (5) administrative patent enforcement. Any member of the public may submit written comments. Examples of first-hand experience using China's patent enforcement system, and recommendations on ways to improve the system, are encouraged. Based on these comments, the USPTO intends to produce a report that details the U.S. view of the patent enforcement landscape in China and identifies any challenges faced by U.S. innovators, together with recommendations for improving the system.

Dated: October 5, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–26757 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2011–0055]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Karen Karlinchak at (571) 272–8717.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent

and Trademark Office Performance Review Board is as follows:

Teresa Stanek Rea, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

Patricia M. Richter, Chief Administrative Officer, United States Patent and Trademark Office.

Robert L. Stoll, Commissioner for Patents, United States Patent and Trademark Office.

Deborah S. Cohn, Commissioner for Trademarks, United States Patent and Trademark Office.

Anthony P. Scardino, Chief Financial Officer, United States Patent and Trademark Office.

John B. Owens II, Chief Information Officer, United States Patent and Trademark Office.

Bernard J. Knight Jr., General Counsel, United States Patent and Trademark Office.

Albert Tramposch, Administrator for Policy and External Affairs, United States Patent and Trademark Office.

Alternates.

Mary Boney Denison, Deputy Commissioner for Trademark Operations, United States Patent and Trademark Office.

Margaret A. Focarino, Deputy Commissioner for Patents, United States Patent and Trademark Office.

Dated: October 7, 2011.

Teresa Stanek Rea,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2011–26751 Filed 10–14–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0037; Docket 2011–0079; Sequence 3]

Federal Acquisition Regulation; Submission for OMB Review; Presolicitation Notice and Response

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning presolicitation notice and response. A notice published in the **Federal Register** at FR 76 at 22706 on April 22, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 16, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0037, Presolicitation Notice and Response, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0037, Presolicitation Notice and Response'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0037, Presolicitation Notice and Response''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0037, Presolicitation Notice and Response'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0037, Presolicitation Notice and Response.

Instructions: Please submit comments only and cite Information Collection 9000–0037, Presolicitation Notice and Response, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Procurement Analyst, Acquisition Policy Division, GSA (202) 219–0202 or *Cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

Respondents: 5,310.
Responses per Respondent: 8.
Annual Responses: 42,480.
Hours per Response: .08.
Total Burden Hours: 3,398.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response, in all correspondence.

Dated: September 29, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

[FR Doc. 2011–26803 Filed 10–14–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of

1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the Defense Intelligence Agency Advisory Board (hereafter referred to as ''the Board'').

The Defense Intelligence Agency Advisory Board, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense through the Under Secretary of Defense for Intelligence and the Director of the Defense Intelligence Agency advice on matters relating to DoD's intelligence enterprise.

The Board shall: (a) Review and evaluate progress on selected intelligence issues, programs and topics; (b) Advise on the effectiveness of intelligence sources and methods to aid the Department of Defense in establishing resource allocations among programs, consistent with national intelligence requirements; (c) Review, evaluate and recommend initiatives to improve support to the defense intelligence enterprise; and (d) Advise on the effectiveness of various methodologies and doctrines.

The Under Secretary of Defense for Intelligence may act upon the Board's advice and recommendations.

The Board shall be comprised of no more than fifteen members appointed by the Secretary of Defense who have distinguished backgrounds in national security policy, defense intelligence, geopolitical matters, academia and the private sector. All Board member appointments must be renewed by the Secretary of Defense on an annual basis.

The Secretary of Defense, based upon the recommendation of the Under Secretary of Defense for Intelligence and the Director of Defense Intelligence Agency, shall select the Chairperson. Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. § 3109 and shall serve as special government employee members. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

All Board members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b), and other governing Federal regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson and the Director of the Defense Intelligence Agency. The estimated number of Board meetings is four per year. In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Defense Intelligence Agency Advisory Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Intelligence Agency Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Intelligence Agency Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Intelligence Agency Advisory Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Intelligence Agency Advisory Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: October 12, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26778 Filed 10–14–11; 8:45 am]

BILLING CODE 5001–06–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 November 16, 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: October 11, 2011.

Darrin King,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: Teaching and Learning International Survey (TALIS) 2013 Field Trial.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 594.

Total Estimated Annual Burden Hours: 1,265.

Abstract: TALIS (Teaching and Learning International Survey) is an international survey of the teaching workforce, teaching as a profession, and the learning environments of schools. Data are collected through questionnaires from individual teachers and their school principals in lower secondary schools (grades 7, 8 and 9) in the United States. TALIS' main objective is to help countries review current policy and develop informed education policy by providing accurate and relevant international indicators on teachers and teaching. TALIS offers an opportunity for teachers and school principals to provide their perspectives on the state of education in their own countries. Both teacher and principal questionnaires include questions about teacher and principal background and characteristics; teacher and principal professional development; school leadership and management; teacher appraisal and feedback; teachers' instructional beliefs and pedagogical practices; school climate and ethos; student characteristics as perceived by the teacher; and teacher efficacy and job satisfaction. TALIS is sponsored by the Organization for Economic Cooperation and Development and managed in the United States by the National Center for Education Statistics (NCES). This submission requests Office of Management and Budget's clearance for (1) a spring 2012 field trial; (2) a fall 2012 recruitment of schools for the spring 2013 main study data collection; and (3) a 60-day **Federal Register** notice waiver for the next Office of Management and Budget clearance package to be submitted in September of 2012 for the spring 2013 main data collection.

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 4696. 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. 2011–26809 Filed 10–14–11; 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 Acting 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 November 16, 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: October 12, 2011.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Case Service Report.

OMB Control Number: 1820–0508.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 80.

Total Estimated Annual Burden Hours: 3,600.

Abstract: As required by Sections 13, 101(a)(10), 106 and 626 of the Rehabilitation Act of 1973, as amended, the data are submitted annually by State Vocational Rehabilitation agencies. The data contain personal and program-related characteristics, including economic outcomes of persons with disabilities whose service records are closed. The information is used to compute agency performance on standards and indicators mandated by

section 106 of the Act as well as to assess agency performance on other evaluative measures used in monitoring of Vocational Rehabilitation grantees and for other program and research purposes.

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 4693. 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. 2011–26810 Filed 10–14–11; 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 Acting 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 December 16, 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: October 12, 2011.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0624.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Federal Government.

Total Estimated Number of Annual Responses: 60.

Total Estimated Annual Burden Hours: 296,400.

Abstract: In accordance with 20 U.S.C. 1416(b)(1), not later than 1 year after the date of enactment of the Individuals with Disabilities Education, as revised in 2004, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B–SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State also shall report annually to the Secretary on the performance of the State under the State's performance plan. This report is called the Part B Annual Performance Report (Part B–APR). Information Collection 1820–0624 corresponds to 34 CFR 300.600–300.602.

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 4736. 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. 2011–26814 Filed 10–14–11; 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 Acting 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 November 16, 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: October 12, 2011.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services,

Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: State Plan for Assistive Technology under the Assistive Technology Act of 1998, as Amended.

OMB Control Number: 1820–0664.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 56.

Total Estimated Annual Burden Hours: 4,144.

Abstract: Section 4 of the Assistive Technology Act of 1998, as amended, requires states to submit an application in order to receive funds under the State Grant for Assistive Technology Program. This information collection will be used by states to meet their application requirements annual data reports. The Rehabilitation Services Administration (RSA) calls this application a State Plan for Assistive Technology. RSA has eliminated the reporting of Telework activities under State Financing activities and reduced burden to grantees by setting the performance measure targets in section H of the State Plan.

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 4701. 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. 2011–26813 Filed 10–14–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE)

AGENCY: U.S. Department of Education.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date and Time: November 2–3, 2011; November 2, 2011—12 p.m. to 8 p.m. Eastern Daylight Savings Time; 9 a.m. to 5 p.m. Pacific Daylight Saving Time. November 3, 2011—12 p.m. to 8 p.m. Eastern Daylight Savings Time; 9 a.m. to 5 p.m. Pacific Daylight Saving Time.

Location: The Doubletree by Hilton Hotel Portland, Hawthorne/Sellwood Ballroom, 1000 NE Multnomah Street, Portland, OR 97232, *Phone:* (503) 281–6111, *Web site: http://www.NACIE-ED.org* (To RSVP, and for NACIE meeting updates, and Final Agenda).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The purpose of this meeting is to convene the Council to commence its responsibilities for developing recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act, as well as the June 2012 report to Congress.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Terrie Nelson at (202) 401–0424 no later than October 26, 2011. We will make every attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Public Comment: Time is scheduled on the agenda to receive public comment at approximately 3 p.m.–5 p.m. Eastern Daylight Savings Time November 2, 2011. Those members of

the public interested in submitting written comments may do so by submitting them to the attention of Jenelle Leonard, Designated Federal Official, U.S. Department of Education, and 400 Maryland Avenue, SW., Room 3W203, Washington, DC 20202–6400 by October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Jenelle Leonard, Designated Federal Official, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. *Telephone:* 202–205–2161. *Fax:* 202–205–5870.

Detailed minutes of the meeting will be available to the public within 14 days of the meeting. Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Monday–Friday, 8:30 a.m.—5 p.m. Washington, DC time.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations are available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–26801 Filed 10–14–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–1–000.
Applicants: Agua Caliente Solar, LLC.
Description: Agua Caliente Solar, LLC Notice of Self Certification of Exempt Wholesale Generator Status.
Filed Date: 10/04/2011.
Accession Number: 20111004–5142.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4500–001.
Applicants: Enel Stillwater, LLC.
Description: Enel Stillwater, LLC submits tariff filing per 35: Enel Stillwater, LLC MBR Tariff to be effective 9/12/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5178.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER11–4618–001.
Applicants: White Pine Electric Power.
Description: White Pine Electric Power submits tariff filing per 35: Market-Based Rate Tariff Compliance Filing to be effective 9/23/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5067.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–22–000.
Applicants: Endure Energy, LLC.
Description: Endure Energy, LLC submits tariff filing per 35.13(a)(2)(iii: Amended Market Based Rate to be effective 10/4/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5136.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–24–000.
Applicants: ML Partnership, LLC.
Description: ML Partnership, LLC Notification of Cancellation.
Filed Date: 10/04/2011.
Accession Number: 20111004–5179.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 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: October 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26697 Filed 10–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–6–000]

Mandatory Reliability Standards for the Bulk-Power System; Notice of Staff Meeting

Take notice that the Federal Energy Regulatory Commission staff will conduct a Technical Discussion on the reliability issues relating to ''Single Point of Failure on Protection Systems,'' on Monday, October 24, from 1 p.m. to approximately 5 p.m. and on Tuesday, October 25, from 8 a.m. to approximately noon. This staff meeting will be held in Hearing Room #3 at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Members of the Commission may attend the conference.

The purpose of the meeting is to discuss the reliability implications to the interconnected transmission system associated with a single point of failure on protection systems. In Order No. 754, the Commission approved NERC's interpretation of Requirement R1.3.10 of Commission-approved transmission planning Reliability Standard TPL–002–0 (System Performance Following Loss of a Single Bulk Electric System Element).[1] In addition, the Commission stated that it believes there is an issue concerning the study of a single point of failure on protection systems.[2] The Commission directed Commission staff to meet with NERC and appropriate subject matter experts to explore this reliability concern, including how it can best be addressed, and identify any additional actions necessary to address the matter.[3]

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice)

[1] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[2] *Interpretation of Transmission Planning Reliability Standard,* Order No. 754, 76 FR 58716 (September 22, 2011), 136 FERC ¶ 61,186, at P 19 (2011).

[3] *Id.* at P 20. The Commission also directed NERC to make an informational filing within six months of the date of the issuance of the Final Rule.

or 202–208–1659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this meeting, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: October 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26695 Filed 10–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP): SPP Strategic Planning Committee Meeting, October 13, 2011,8 a.m.–3 p.m., Local Time.

The above-referenced meeting will be held at: Doubletree Dallas, 4099 Valley View Lane, Dallas, TX 75244.

The above-referenced meeting is open to stakeholders.

Further information may be found at *http://www.spp.org.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER10–1069–001, *Southwest Power Pool, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER09–548–001, *ITC Great Plains, LLC.*

Docket No. ER09–35–001, *Tallgrass Transmission, LLC.*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC.*

Docket No. ER09–36–002, *Prairie Wind Transmission, LLC.*

For more information, contact Partha Malvadkar, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6332 or *partha.malvadkar@ferc.gov.*

Dated: October 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26696 Filed 10–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–1–000]

Reliability Technical Conference; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission will hold a Technical Conference on Tuesday, November 29, 2011, from 1 p.m. to 5 p.m. and Wednesday, November 30, 2011, from 9 a.m. to 4 p.m. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend, and advance registration is not required.

The purpose of the conference is to discuss policy issues related to reliability of the Bulk-Power System. The conference will explore the progress made on the priorities for addressing risks to reliability that were identified in earlier Commission technical conferences. The conference also will discuss emerging issues, including processes used by planning authorities and other entities to identify reliability concerns that may arise in the course of compliance with Environmental Protection Agency regulations, and the tools and processes (including tariffs and market rules) available to address any identified reliability concerns.

The agenda for this conference will be issued at a later date. Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov*, prior to the event.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: October 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26694 Filed 10–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—2025 Power Marketing Initiative Proposal

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed 2025 Power Marketing Initiative.

SUMMARY: Western Area Power Administration (Western), Rocky Mountain Region (RMR), a Federal power marketing agency of the Department of Energy (DOE), is seeking comments on this proposed 2025 Power Marketing Initiative (2025 PMI). Western's firm electric service contracts associated with the current marketing plan will expire September 30, 2024. This proposed 2025 PMI provides the basis for marketing the long-term firm hydroelectric resources of the Loveland Area Projects (LAP) beginning with the Federal fiscal year 2025. The 2025 PMI proposes to extend the current marketing plan, with amendments to key marketing plan principles. This **Federal Register** notice initiates Western's public process for the proposed 2025 PMI and requests public comments. Western will prepare and publish the final 2025 PMI in the **Federal Register** after all public comments are considered.

DATES: Entities and individuals interested in commenting on the proposed 2025 PMI must submit written comments to Western's RMR. Western must receive written comments by 4 p.m. M.S.T., on Monday, January 30, 2012, and reserves the right to not consider any comments received after the deadline.

Western will hold two combined public information and public comment forums, not to exceed three hours each, on the proposed 2025 PMI. On each date, the public information forum will immediately precede the public comment forum.

The public information and public comment forum dates and times are:

1. November 29, 2011, 9 a.m., M.S.T., Loveland, Colorado.

2. November 30, 2011, 1 p.m., C.S.T., Topeka, Kansas.

ADDRESSES: Submit written comments regarding this proposed 2025 PMI to Mr. Bradley S. Warren, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986. Comments may also be faxed to (970) 461–7204, or e-mailed to *2025PMI@wapa.gov.*

The locations for the public information and public comment forums are:

1. Loveland—Embassy Suites Hotel, Spa and Conference Center, 4705 Clydesdale Parkway, Loveland, CO 80538, telephone number (970) 593–6200.

2. Topeka—Capitol Plaza Hotel, 1717 SW Topeka Boulevard, Topeka, KS 66612, telephone number (785) 431–7200.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Gierard, Hydraulic Engineer, Western Area Power Administration, Rocky Mountain Region, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7445.

SUPPLEMENTARY INFORMATION:

Current Marketing Plan Background

The final Post-1989 General Power Marketing and Allocation Criteria, Pick-Sloan Missouri Basin Program—Western Division (PS–MB–WD) (Post-1989 Plan), was published in the **Federal Register** (51 FR 4012, January 31, 1986) and provided the marketing plan principles used to market what is now referred to as LAP firm hydropower resources. The firm electric service contracts associated with the Post-1989 Plan were initially to expire in 2004. The Energy Planning and Management Program (EPAMP) Final Rule published in the **Federal Register** (60 FR 54151, October 20, 1995), Subpart C extended and amended the Post-1989 Plan. EPAMP extended the firm electric service contracts associated with the Post-1989 Plan through September 30, 2024, and established the Post-2004, Post-2009, and Post-2014 resource pools. The current marketing plan is inclusive of the Post-1989 Plan as extended and amended by EPAMP and the Post-2004, Post-2009, and Post-2014 power marketing initiatives.

2025 PMI Proposal Background

Western initiated informal 2025 PMI discussions with LAP firm electric service customers in the summer of 2011 by holding meetings in the RMR. In addition, Western held meetings to initiate government-to-government consultation with tribal firm electric service customers. The meetings provided customers the opportunity to review current marketing plan principles and provide informal input to Western for consideration in this 2025 PMI proposal. Key marketing plan principles discussed at the meetings with firm electric service customers included: marketing area; contract term; resource pools; marketable resource and associated withdrawal provisions; and Mount Elbert pumped-storage. Customer input for the 2025 PMI proposal supported Western extending the current marketing plan with amendments to the marketing plan principles related to contract term and resource pools.

2025 PMI Proposal

Western's 2025 PMI proposes to extend the current marketing plan with amendments to the marketing plan principles related to the contract term and resource pools. The marketing plan principles proposed to be revised, as well as those proposed to be extended, are as follows:

Amended Marketing Plan Principles

1. *Contract Term:* A 30-year contract term would be used for firm electric service contracts. The firm electric service contract term would begin October 1, 2024, and expire September 30, 2054.

2. *Resource Pools:* The 2025 PMI would provide for resource pools of up to 1 percent of the marketable resource under contract at the time of each reallocation to be available for eligible new preference entities. Reallocations would occur at the beginning of the October 1, 2024, contract term and again every 10 years thereafter on October 1, 2034, and October 1, 2044.

Extended Marketing Plan Principles

Extension of the current marketing plan includes the following key principles not specifically addressed in the preceding section entitled ''Amended Marketing Plan Principles.'' The following key principles were discussed with the firm electric service customers during the informal customer input phase of this process and are included below for reference purposes.

1. *Marketable Resource:* Reservoir operation modeling, which employs the historic hydrologic record and assumes 2025 reservoir operating criteria, is being used to project monthly marketable energy and capacity. Projected marketable energy is the average monthly energy indicated by the modeling with provisions for: power plant station service use; energy received to compensate for Green Mountain power interference; reduced generating efficiency caused by power system regulation; Colorado-Big Thompson Project pumping; Project Use loads; and Special Use loads. For Mt. Elbert generation, only the flow-through generation resulting from the transfer of water through the Mt. Elbert Conduit to Twin Lakes is included in the marketable energy totals. Projected marketable capacity is the monthly capacity available 90 percent of the time as indicated by the modeling with provisions for: typical generating unit maintenance outages; power system reserve requirements; Colorado-Big Thompson Project on-peak pumping; Project Use loads; and Special Use loads. Mt. Elbert generating capacity was assumed to be available at all times except during times of typical unit maintenance.

Based on the marketable energy and capacity projections and taking into account the uncertainty in projecting 2025 reservoir operating criteria, the proposed 2025 PMI supports extending the existing contract rates of delivery commitments, with associated energy, to existing long-term firm electric service customers reduced by up to 1 percent for each new resource pool on October 1, 2024, October 1, 2034, and October 1, 2044.

2. *Hydrology and River Operations Withdrawal Provision:* Western would reserve the right to adjust, at its discretion and sole determination, the contract rate of delivery on five years advance written notice in response to changes in hydrology and river operations. Any such adjustments would take place after an appropriate public process.

3. *Marketing Area:* The proposed 2025 PMI supports continuing the current LAP marketing area, which is the portion of Colorado east of the Continental Divide; Mountain Parks Electric, Inc.'s, service territory in Colorado west of the Continental Divide; the portion of Kansas located in the Missouri River Basin; the portion of Kansas west of the eastern borders of the counties intersected by the 100th Meridian; the portion of Nebraska west of the 101st Meridian; and Wyoming east of the Continental Divide.

4. *Mt. Elbert Pumped-Storage:* The proposed 2025 PMI supports extending the Mt. Elbert Pumped-Storage contract provisions, which provide for pumped-storage energy. The full 200 MW of Mt. Elbert capacity is included in the LAP capacity allocations. Only flow-through generation is included in LAP energy allocations. Customers may schedule capacity without energy. Off-peak energy must be returned to Western commensurate with any on-peak energy taken.

Availability of Information

Documents developed or retained by Western during this public process will be available for inspection and copying at the RMR Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado. Western will post information concerning the proposed 2025 PMI on

its Web site at *https://www.wapa.gov/rm/PMcontractRM/2025%20PMI/default.html.* Written comments received as part of the 2025 PMI proposal formal public process will be available for viewing on the Web site.

2025 PMI Procedures Requirements

Environmental Compliance

Western will evaluate this action for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations (40 CFR parts 1500—1508); and DOE NEPA Regulations (10 CFR 1021).

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: October 7, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–26750 Filed 10–14–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2014 Resource Pool-Loveland Area Projects, Final Power Allocation

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final power allocation.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its Post-2014 Resource Pool-Loveland Area Projects, Final Power Allocation developed under the requirements of subpart C–Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule, 10 CFR part 905. These final power allocations are established prior to the contractual phase of the process. Firm electric service contracts negotiated between Western and allottees will permit delivery of power from the October 2014 billing period through the September 2024 billing period.

DATES: The Post-2014 Resource Pool-Loveland Area Projects, Final Power Allocation will become effective November 16, 2011, and will remain in effect until September 30, 2024.

ADDRESSES: Information about the Post-2014 Resource Pool-Loveland Area Projects allocation procedures, including comments, letters, and other supporting documents, is available for public inspection and copying at the Rocky Mountain Customer Service Region office, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

SUPPLEMENTARY INFORMATION: Western published the Post-2014 Resource Pool-Loveland Area Projects, Allocation Procedures and Call for Applications (75 FR 78988) on December 17, 2010. These actions implement Subpart C–Power Marketing Initiative of the Program's Final Rule. *See* 10 CFR part 905, (60 FR 54151, Oct. 20, 1995). The Program, developed in part to implement Section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The Program establishes project-specific power resource pools and the allocation of power from these pools to new preference customers. The allocation procedures, in conjunction with the General Power Marketing and Allocation Criteria (51 FR 4012, January 31, 1986), establish the framework for allocating power from the Loveland Area Projects (LAP) resource pool.

Western published its Post-2014 Resource Pool; Loveland Area Projects, Proposed Power Allocation (Proposed Power Allocation) and initiated a public comment period in the Federal Register (76 FR 45551, July 29, 2011). A public comment forum on the Proposed Power Allocation was held August 25, 2011. Public comments were due to Western by September 12, 2011, at 4 p.m. MDT. There were no comments received during the public comment period.

I. Post-2014 Pool Resources

Western will allocate up to 1 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2014. The amount of the resource that will become available on October 1, 2014, is approximately 6.9 megawatts (MW) for the summer season and 6.1 MW for the winter season, and associated energy. This resource pool will be created by reducing existing customers' allocations by up to 1 percent.

II. Final Power Allocation

Western received seven applications for the Post-2014 Resource Pool; Loveland Area Projects. Western determined that one applicant does not meet the Post-2014 Resource Pool; Loveland Area Projects, General Eligibility Criteria. The resource pool for capacity and energy will be allocated proportionately by season to the six qualified applicants based on seasonal loads for the period October 2009 through September 2010. The final power allocations for the six qualified allottees are shown in the table below and are subject to the minimum (100 kilowatts) and maximum allocation (5,000 kilowatts) criteria. The Winter kilowatt hours in the table below have been revised since publication of the Proposed Power Allocation to correct a calculation error.

Allottees	Post-2014 LAP resource pool final power allocation			
	Summer kilowatt hours	Winter kilowatt hours	Summer kilowatts	Winter kilowatts
City of Jetmore, Kansas	458,186	301,817	280	201
City of Pomona, Kansas	355,544	254,634	217	169
City of Waterville, Kansas	257,578	191,505	157	127
Doniphan Electric Cooperative Association, Inc.	859,388	839,670	526	558
Kaw Valley Electric Cooperative, Inc.	7,156,517	5,561,049	4,374	3,697
Nemaha-Marshall Electric Cooperative Association, Inc.	2,215,224	1,957,475	1,354	1,301
Total Resource Pool	11,302,437	9,106,150	6,908	6,053

By June 1, 2014, each allottee must have firm delivery arrangements in place, to be effective October 1, 2014, unless otherwise agreed to in writing by Western. Western must receive a letter of commitment from each allottee's serving utility or transmission provider by June 1, 2014, confirming that the allottee will be able to receive the benefit of Western's Post-2014 LAP Resource Pool Power Allocation. If Western does not receive the

commitment letter by June 1, 2014, unless otherwise agreed in writing by Western, Western will withdraw its offer of a power allocation.

Western does not own transmission in Kansas. Final allocation of the Post-2014 Resource Pool; Loveland Area Projects, is contingent upon Western's contractual arrangements for delivery of Federal power into Kansas.

The final power allocations shown in the table above are based on the LAP marketable resource currently available. If the LAP marketable resource is adjusted in the future, all allocations may be adjusted accordingly.

III. Review Under the National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

IV. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: October 7, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–26777 Filed 10–14–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9478–7]

Availability of FY 10 Grantee Performance Evaluation Reports for the Eight States of EPA Region 4 and 17 Local Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; Clean Air Act Section 105 grantee performance evaluation reports.

SUMMARY: EPA's grant regulations require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Commonwealth of Kentucky Energy and Environment Cabinet; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 17 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection and Growth Management Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Orange County Environmental Protection Division, FL; Palm Beach County Health Department, FL; Pinellas County Parks and Conservation Resources, FL; Louisville Metro Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Metropolitan Government of Nashville and Davidson County Public Health Department, TN). The 25 evaluations were conducted to assess the agencies' Fiscal Year 2010 performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides and Toxics Management Division. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the state and local agencies of Alabama and Kentucky; Artra Cooper (404) 562–9047 for the state and local agencies of Florida; Mary Echols (404) 562–9053 for the state agency of Georgia; Miya Smith (404) 562–9091 for the state and local agencies of North Carolina; Angela Isom (404) 562–9092 for the state agencies of Mississippi and South Carolina; and Patricia Bullock (404) 562–9511 for the state and local agencies of Tennessee. They may be contacted at the Region 4 address mentioned in the previous section of this notice.

Dated: September 20, 2011.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 2011–26523 Filed 10–14–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Notice of Submission for OMB Review; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Uniform Guidelines on Employee Selection Procedures—Extension without change.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission gives notice that it is submitting the information described below to the Office of Management and Budget (OMB) for a three-year authorization.

DATES: Written comments on this final notice must be submitted on or before November 16, 2011.

ADDRESSES: The Request for Clearance (SF83–I) and supporting statement submitted to OMB for review may be obtained from Kathleen Oram, Senior Attorney, (202) 663–4681, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. Comments on this final notice must be submitted to Chad Lallemand in the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Chad_A._Lallemand@omb.eop.gov.* Comments should also be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free FAX number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at

(202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll free numbers).

All comments received by the EEOC will be posted without change to the Federal eRulemaking Portal: *http://www.regulations.gov,* including any personal information provided.

Copies of the received comments also will be available for inspection in the EEOC Library, FOIA Reading Room, by advance appointment only, from 9 a.m. to 5 p.m., Monday through Friday, except legal holidays, from November 16, 2011. Persons who schedule an appointment in the EEOC Library, FOIA Reading Room, and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, FOIA Reading Room, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers).

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Senior Attorney, at (202) 663–4681 (voice), or Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

Introduction

A notice that EEOC would be submitting this request to the Office of Management and budget for a three-year approval under the Paperwork Reduction Act (PRA) was published in the **Federal Register** on August 3, 2011, allowing for a 60 day comment period. 76 FR 46805 (Aug. 3, 2011).

EEOC received one comment in response to the August 2011 notice. The comment raises issues and concerns about the Uniform Guidelines on Employee Selection Procedures themselves and about their recordkeeping provisions. The comment argues that the Uniform Guidelines are merely advisory, not mandatory, and notes that the Department of Labor's Office of Contract Compliance Programs requests applicant information during compliance evaluations, suggesting that such requests qualify as a reporting requirement. The comment does not address the August 2011 Paperwork Reduction Act notice itself or EEOC's calculations in the burden statement.

Overview of Collection

Collection Title: Recordkeeping Requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR part 1607, 41 CFR part 60–3, 28 CFR part 50, 5 CFR part 300.

OMB Number: 3046–0017.

Type of Respondent: Businesses or other institutions; Federal Government; State or local governments and farms.

North American Industry Classification System (NAICS) Code: Multiple.

Standard Industrial Classification Code (SIC): Multiple.

Description of Affected Public: Any employer, Government contractor, labor organization, or employment agency covered by the Federal equal employment opportunity laws.

Respondents: 899,580.

Responses: 899,580.

Recordkeeping Hours: 10,783,687 per year.

Number of Forms: None.

Form Number: None.

Frequency of Report: None.

Abstract: The Uniform Guidelines provide fundamental guidance for all Title VII-covered employers about the use of employment selection procedures. The records addressed by UGESP are used by respondents to assure that they are complying with Title VII and Executive Order 11246; by the Federal agencies that enforce Title VII and Executive Order 11246 to investigate, conciliate, and litigate charges of employment discrimination; and by complainants to establish violations of Federal equal employment opportunity laws. While there is no data available to quantify these benefits, the collection of accurate applicant flow data enhances each employer's ability to address any deficiencies in recruitment and selection processes, including detecting barriers to equal employment opportunity.

Burden Statement: There are no reporting requirements associated with UGESP. The burden being estimated is the cost of collecting and storing a job applicant's gender, race, and ethnicity data. The only paperwork burden derives from this recordkeeping.

Only employers covered under Title VII and Executive Order 11246 are subject to UGESP. For the purpose of burden calculation, employers with 15 or more employees are counted. The number of such employers is estimated at 899,580, which combines estimates from private employment,[1] the public sector,[2] colleges and universities,[3] and referral unions.[4]

This burden assessment is based on an estimate of the number of job applications submitted to all Title VII-covered employers in one year, including paper-based and electronic applications. The total number of job applications submitted every year to covered employers is estimated to be 1,294,042,500, which is based on a National Organizations Survey[5] average of approximately 35 applications for every hire and a Bureau of Labor Statistics data estimate of 36,731,900 annual hires.[6] It includes 161,300 applicants for union membership reported on the EEO–3 form for 2008.

The employer burden associated with collecting and storing applicant demographic data is based on the following assumptions: applicants would need to be asked to provide three pieces of information—sex, race/ethnicity, and an identification number (a total of approximately 13 keystrokes); the employer would need to transfer information received to a database either manually or electronically; and the employer would need to store the 13 characters of information for each applicant. Recordkeeping costs and burden are assumed to be the cost of entering 13 keystrokes.

Assuming that the required recordkeeping takes 30 seconds per record, and assuming a total of 1,294,042,500 paper and electronic applications per year (as calculated above), the resulting UGESP burden hours would be 10,783,687. Based on a wage rate of $13.65 per hour for the individuals entering the data, the collection and storage of applicant demographic data would come to approximately $147,197,332 per year for

[1] "Employer Firms, Establishments, Employment, Annual Payroll and Receipts for Small Firm Size Classes, 2007 (*http://www.sba.gov/advo/research/data.html#us*).

[2] "Government Employment & Payroll" (statistics on number of federal, state, and local government civilian employees and their gross payrolls for March 2008); "2008 State & Local Government" (data for 50 state governments and all local governments); Individual Government Data File (*http://www.census.gov/govs/apes/indes.html-2010*). The number of government entities was adjusted to only include those with 15 or more employees.

[3] Postsecondary Institutions in the United States: Fall 2007; Degrees and Other Awards Conferred: 2006–07; and 12-Month Enrollment: 2006–07, (*http://nces.ed.gov/pubsearch/pubsinfo.spp?pubid=2008159rev*).

[4] EEO–3 Reports filed by referral unions in 2008 with EEOC.

[5] The National Organizations Survey is a survey of business organizations across the United States in which the unit of analysis is the actual workplace, (*http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/04074*).

[6] Bureau of Labor Statistics Job Openings and Labor Turnover Survey–2010—(*http://www.bls.gov/jlt/data.htm*) adjusted to only include hires by firms with 15 or more employees.

Title VII-covered employers. We expect that the foregoing assumptions are over-inclusive, because many employers have electronic job application processes that should be able to capture applicant flow data automatically.

While the burden hours and costs for the UGESP recordkeeping requirement seem very large, the average burden per employer is relatively small. We estimate that UGESP applies to 899,580 employers, approximately 822,000 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy.[7] If we assume that a firm with 250 employees (in the mid-range of the 822,000 small employers) has 20 job openings per year and receives an average of 35 applications per job opening, the burden hours to collect and store applicants' sex and race/ethnicity data would be 5.8 hours per year, and the costs would be $79.11 per year. Similarly, if we assume that an employer with 1,500 employees has 125 job openings to fill each year, and receives 35 applications per opening, the burden hours would be 36.5 hours per year and the annual costs would be $498.23.

Dated: October 11, 2011.

Jacqueline A. Berrien,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 2011–26800 Filed 10–14–11; 8:45 am]

BILLING CODE 6570–01–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: October 11, 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
10400	Sun Security Bank	Ellington	MO	10/7/2011
10399	The RiverBank	Wyoming	MN	10/7/2011

[FR Doc. 2011–26693 Filed 10–14–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, October 20, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting will be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of October 6, 2011.

Proposed Final Audit Report on the Service Employees International Union Committee on Political Education (SEIU COPE) (A09–28).

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–26954 Filed 10–13–11; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–248]

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Committee Public Meeting Times and Dates: (All times are Eastern Standard Time)

8:15 a.m.–5 p.m., November 9, 2011,
8 a.m.–12 p.m., November 10, 2011.

Public Comment Times and Dates: (All times are Eastern Standard Time)

3:15 p.m.–4:15 p.m., November 9, 2011,
8:15 a.m.–9:15 a.m., November 10, 2011.

[7] See Firm Size Data at http://sba.gov/advo/research/data.html#us.

Please note that the public comment period ends at the times indicated or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up at the meeting site, beginning at 8 a.m., each day, before the public comment time. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public sessions.

Place: Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York, 10278.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 300 people. No additional seating will be allowed in the meeting space. In addition, there will be an audio conference setup for those who cannot attend in person. The conference line will accommodate up to 300 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

Security Considerations: Due to mandatory security clearance procedures at the Jacob K. Javits Federal Building, in-person attendees must present valid government-issued picture identification to security personnel upon entering the building and go through an airport-type security check. Non-U.S. citizens are encouraged to participate in the audio conferencing due to the extra clearance involved with in-person attendance. To attend in person, a non-U.S. citizen will have to call or send an e-mail before October 25, 2011, to the contact person in this Notice, and provide passport information. If clearance is received, you will be notified; otherwise, you will not be able to attend the meeting in person.

Background: The Advisory Committee was established by Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010, Title XXXIII of the Public Health Service Act), enacted on January 2, 2011 and codified at 42 U.S.C. 300mm–300mm–61.

Purpose: The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria and potential additions to the list of covered WTC-related health conditions.

Title XXXIII of the Public Health Service Act established within the Department of Health and Human Services (HHS), the World Trade Center (WTC) Health Program, to be administered by the WTC Program Administrator. The WTC Health Program provides: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2011, terrorist attacks, and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City, who were directly impacted and adversely affected by such attacks (''survivors'').

Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee established under Section 300mm–1(a) is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was issued on May 12, 2011, and will expire on May 12, 2013.

Matters to be Discussed: The agenda for the Advisory Committee meeting includes: WTC Health Program Overview; Panel Presentations from WTC Responders and Survivors; Presentations from WTC Health Program Medical Monitoring and Treatment Programs and Health Registry; and discussion regarding ways and means of accomplishing the committee's work.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted to the contact person below by October 28, 2011. Efforts will be made to provide the two-page written comments received by the deadline below at the meeting. Comments in excess of two pages will be made publicly available at the NIOSH docket (*http://www.cdc.gov/niosh/docket/archive/docket248.html*). Submissions to the docket should reference docket #248, and be sent to the NIOSH Docket Office at:

- Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
- Facsimile: (513) 533–8285.
- E-mail: *nioshdocket@cdc.gov*.
- Telephone: (513) 533–8611.

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to NIOSH Docket #248 within 30 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted; and (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments. If individuals in making a statement reveal personal information (*e.g.,* medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

Contact Person for More Information: Paul J. Middendorf, PhD, Designated Federal Official, NIOSH, CDC, 4676 Columbia Parkway Mail Stop R–45, Cincinnati, Ohio 45226, telephone 1 (888) 982–4748; e-mail: *wtc-stac@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: October 11, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–26795 Filed 10–14–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Emotional Health and Social Adjustment.

Date: October 27–28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristen Prentice, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26782 Filed 10–14–11; 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, Cancer Prevention Research Small Grant Program (R03).

Date: November 1–2, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Conference & Center Hotel, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Clifford W Schweinfest, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892–8329. 301–402–9415. *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Community Clinical Oncology Program Groups.

Date: November 8, 2011.

Time: 8 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: Timothy C. Meeker, PhD, MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892. (301) 594–1279. *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, R13 Review.

Date: November 10, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Cancer Institutes, 6116 Executive Boulevard, Room 8041, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Bratin K. Saha, PhD, Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8041, Bethesda, MD 20892. (301) 402–0371. *sahab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Target Discovery and Development.

Date: November 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Viatcheslav A Soldatenkov, MD, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8057, Bethesda, MD 20892–8329. 301–451–4758. *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Agent Development Program: Early Phase Clinical Research.

Date: November 16–17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Donald L. Coppock, PhD, Scientific Review Officer, Scientific Review and Logistic Branch, Division of Extramural Activities, NCI, National Institutes of Health, 6116 Executive Blvd., Rm 7151, Bethesda, MD 20892. 301–451–9385. *donald.coppock@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Training and Education.

Date: November 29, 2011.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Timothy C. Meeker, MD, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892. (301) 594–1279. *meekert@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: October 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26784 Filed 10–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vascular Hematology.
Date: November 7–8, 2011.
Time: 11 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Role of Environmental Chemical Exposures in the Development of Obesity, Type 2 Diabetes, and Metabolic Syndrome.
Date: November 9, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Ischemia and Heart Failure.
Date: November 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).
Contact Person: Maqsood A Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–160, 09–162, & 11–156: Cancer Health Disparities/Diversity in Basic Cancer Research.
Date: November 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Cathleen L Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Neuropharmacology.
Date: November 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Dan D Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7843, Bethesda, MD 20892, 301–408–9164, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oxidative Stress, Aging, and Transmitters.
Date: November 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.
Date: November 9–10, 2011.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: JW Marriott Orlando Grande Lakes, 40400 Central Florida Parkway, Orlando, FL 32837.
Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2011

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26788 Filed 10–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Populations Sciences Subcommittee.
Date: November 7, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Date: November 8, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., ROOM 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26786 Filed 10–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: November 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Anne Krey, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: *October 6, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26789 Filed 10–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel. ZHD1 DRG–H 40 1.

Date: November 3, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: David H. Weinberg, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852. 301–435–6973. *David.Weinberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26790 Filed 10–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0027; OMB No. 1660–0107]

Agency Information Collection Activities: Proposed Collection; Comment Request, Title: Public Assistance Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the survey forms used to measure customer satisfaction against standards for performance and customer service, and generally gauge and make improvements to disaster services that increase customer satisfaction.

DATES: Comments must be submitted on or before December 16, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://*www.regulations.gov under Docket ID FEMA- 2011–0027. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2011–0027 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathy Canaday, Customer Satisfaction Analyst, FEMA, 940 891–8856 or Maggie Billing, Program Analyst, FEMA, 940 891–8709 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Executive Order (EO) 12862 requires that all Federal agencies survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act (GPRA) requires agencies to set

missions and goals, and measure performance against them. FEMA will fulfill these requirements by collecting customer satisfaction information through administration of surveys of the Recovery Directorate (RD) external customers who receive Public Assistance grants so that communities can quickly respond to and recover from major disasters or emergencies declared by the President. The measurement results will come from the FEMA Public Assistance Customer Satisfaction Survey.

Collection of Information

Title: Public Assistance Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0107.

Form Titles and Numbers: FEMA Form 519–0–1 T, Public Assistance Customer Satisfaction Survey (Telephone); FEMA Form 519–0–1 INT, Public Assistance Customer Satisfaction Survey (Web); FEMA Form 519–0–1, Public Assistance Customer Satisfaction Survey (Fill-able).

Abstract: This collection of information enables the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Affected Public: Not-for-profit institutions, State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 3,695 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response 20 minutes (or .333 hours)	Total annual burden (in hours)
	(Phone)				
Not-for-profit institutions	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1T.	630	1	15	158
State, Local or Tribal Government.	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1T.	5,670	1	15	1,418
Sub-Total	(Phone)	6,300			1,575
	(Fillable Form)				
Not-for-profit institutions	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1.	157	1	20	52
State, Local or Tribal Government.	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1.	1,418	1	20	473
Sub-Total	(Fill able Form)	1,575			525
	(Web-based)				
Not-for-profit institutions	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1INT.	157	1	20	52
State, Local or Tribal Government.	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1INT.	1,418	1	20	473
Sub-Total	(Web-based)	1,575			525
	(Fillable Form/Fax)				
Not-for-profit institutions	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1.	52	1	20	17
State, Local or Tribal Government.	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1.	473	1	20	158
Sub-Total	(Fax)	525			175
	(Fillable Form/Mail/Paper)				
Not-for-profit institutions	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1.	52	1	20	17
State, Local or Tribal Government.	Public Assistance Customer Satisfaction Survey/ FEMA Form 519–0–1.	473	1	20	158
Sub-Total	(Mail/Paper)	525			175
Total Sub-Total	(Phone, Fillable, Web-Based)	10,500			2,975
	(Focus Groups)				
Not-for-profit institutions	Focus Groups based on 12 participants for each Session and 1 Session for each of 5 Regions Per Year.	60	1	3	180

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response 20 minutes (or .333 hours)	Total annual burden (in hours)
State, Local or Tribal Government.	Focus Groups based on 12 participants for each Session and 3 Sessions for each of 5 Regions Per Year.	180	1	3	540
Sub-Total	(Focus Groups)	240			720
Total		10,740			3,695

Estimated Cost: The estimated annual cost to respondents for the hour burden is $131,394.76. There are no annual costs to respondents operations and maintenance costs for technical services. There are no annual start-up or capital costs. The total annual non-labor cost is $7,344. The cost to the Federal government is $828,407.59.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Gary L. Anderson,

Acting Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–26710 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26712 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Bladen County for Individual Assistance.

Columbus and Sampson Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26717 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Cherokee County for Public Assistance, including direct federal assistance.

Gregg, Harrison, Houston, and Rusk Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26719 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Navarro County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26716 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR]
Docket ID FEMA–2011–0001

New York; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2011.

Fulton County for Individual Assistance.
Schoharie County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26715 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4025–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

Bucks, Lehigh, Monroe, and Montgomery Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26722 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4011–DR;Docket ID FEMA–2011–0001]

Utah; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Utah (FEMA–4011–DR), dated August 8, 2011, and related determinations.

DATES: *Effective Date:* September 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Daniel T. Alexander, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Mark H. Landry as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26725 Filed 10–14–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1984–DR; Docket ID FEMA–2011–0001]

South Dakota; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of South Dakota (FEMA–1984–DR), dated May 13, 2011, and related determinations.

DATES: *Effective Date:* October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Mark A. Neveau as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26721 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4038–DR; Docket ID FEMA–2011–0001

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–4038–DR), dated October 5, 2011, and related determinations.

DATES: *Effective Date:* October 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 5, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Maryland resulting from the remnants of Tropical Storm Lee during the period of September 6–9, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

Anne Arundel, Cecil, Charles, and Prince George's Counties for Public Assistance.

All counties and the Independent City of Baltimore in the State of Maryland are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26714 Filed 10–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–102]

Notice of Submission of Proposed Information Collection to OMB; Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is required in conjunction with the issuance of Notice of Funding Availability of approximately for Healthy Homes and Lead Hazard Control Programs that are authorized under Title X of the Housing and Community Development Act of 1992, Public Law 102–550, Section 1011, and other legislation. The quality Assurance Plan is obtained after the award of grants.

DATES: *Comments Due Date: November 16, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2539–0015) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email *OIRA–Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans.

OMB Approval Number: 2539–0015.

Form Numbers: HUD 96012, HUD 27300, HUD 96015, HUD 27061, SF 424, HUD 2994–A, SF LLL, HUD 96010, HUD 96011, HUD 96014, HUD 424 cbw, HUD 2880, HUD 96013, HUD 96008, HUD 96009.

Description of the Need for the Information and Its Proposed Use:

This information collection is required in conjunction with the

issuance of Notice of Funding Availability of approximately for Healthy Homes and Lead Hazard Control Programs that are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, Section 1011, and other legislation. The quality Assurance Plan is obtained after the award of grants.

Frequency of Submission: Once, On Occasion.

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	250	1.32	65.939		21,760

Total Estimated Burden Hours: 21,760.

Status: Reinstatement without change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 7, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–26698 Filed 10–14–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5558–D–01]

Delegation of Authority for the Office of Departmental Operations and Coordination

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Through this notice, the Secretary delegates to the Director of Departmental Operations and Coordination authority and responsibility for departmental operations and coordination, specifically relating to quality management reviews, labor relations, and the Southwest Borders Initiative. This delegation supersedes all previous delegations of authority to the Office of Departmental Operations and Coordination (ODOC).

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Edwardo S. Bowen, Departmental Operations Officer, Office of Departmental Operations and Coordination, Department of Housing and Urban Development, 451 7th Street SW., Room 2124, Washington, DC 20410, telephone number 202–708–2806, extension 2143. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Section A. Authority Delegated

The Secretary hereby delegates to the Director of Departmental Operation and Coordination the authority and responsibility for departmental operations and coordination, specifically relating to quality management reviews, labor relations, and the Southwest Borders Initiative.

Section B. Authority Excepted

The authority delegated in this document does not include the authority to sue or be sued or to issue or waive regulations.

Section C. Authority To Redelegate

The Secretary authorizes that the Director of ODOC may redelegate the authority described in Section A.

Section D. Authority Superseded

This delegation supersedes all previous delegations of authority to the Office of Departmental Operations and Coordination. The Secretary may revoke the authority authorized herein, in whole or part, at any time.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 4, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–26709 Filed 10–14–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5558–D–02]

Order of Succession for the Office of Departmental Operations and Coordination

AGENCY: Office of Departmental Operations and Coordination, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Director, Office of Departmental Operations and Coordination, Department of Housing and Urban Development, designates the Order of Succession for the Office of Departmental Operations and Coordination. This Order of Succession supersedes any previous Order of Succession for the Office of Departmental Operations and Coordination.

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Edwardo S. Bowen, Office of Departmental Operations and Coordination, Department of Housing and Urban Development, 451 7th Street SW., Room 2124, Washington, DC 20410, telephone number (202) 708–2806, extension 2143. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1 (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Director, Office of Departmental Operations and Coordination, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of Departmental Operations and Coordination when, by reason of absence, disability, or vacancy in office, the Director is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes any previous Order of Succession by the Office of Departmental Operations and Coordination.

Accordingly, the Director designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Director of the Office of Departmental Operations and Coordination of the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Director, the following officials within the Office of Departmental Operations and Coordination are hereby designated to exercise the powers and perform the duties of the office:

(1) Deputy Director, Office of Departmental Operations and Coordination.

(2) Director, Office of Labor Relations.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes any previous Order of Succession published by the Office of Departmental Operations and Coordination.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 2011.

Inez Banks-Dubose,

Director.

[FR Doc. 2011–26711 Filed 10–14–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB07000.L17100000.PH0000; HAG11–0206]

Call for Nominations for Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Call for Nominations.

SUMMARY: The Bureau of Land Management (BLM) requests public nominations for five persons to serve on the Steens Mountain Advisory Council. Citizens who serve on this council provide advice and recommendations to the BLM on land use planning and management of the Steens Mountain Cooperative Management and Protection Area. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than November 16, 2011.

ADDRESSES: Send completed Advisory Council nominations to BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424. Nomination forms are also available at the BLM Burns District Office.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424, 541–573–4519, or e-mail *tmartina@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: Positions currently open or with terms expiring in 2011 include: A member of the Burns Paiute Tribe; a person who is a recognized environmental representative from the local area; a person with expertise and interest in wild-horse management on Steens Mountain; a person who is a grazing permittee on Federal lands in the Cooperative Management and Protection Area (CMPA); a person who participates in what is commonly called dispersed recreation, such as hiking, camping, nature viewing, nature photography, bird watching, horseback riding, or trail walking; and a person who has no financial interest in the CMPA to represent statewide interests. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees, or councils.

The Steens Mountain Advisory Council was initiated on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Public Law 106–399). The Steens Mountain Advisory Council provides representative counsel and advice to the BLM and formulates recommendations to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area; and regarding cooperative programs and incentives for landscape management that meet human needs and maintain and improve the ecological and economic integrity of the Area.

Michael Mottice,

Associate State Director.

[FR Doc. 2011–26741 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000; WYW174596]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the South Hilight Field Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m. on Wednesday, December 14, 2011. Sealed bids must be submitted on or before 4 p.m. on Tuesday, December 13, 2011.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107) of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Kathy Muller Ogle, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Ark Land Company, St. Louis, Missouri. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following described lands located 2 to 5 miles south of State Highway 450 and east of the Burlington Northern/Union Pacific main line railroad.

T. 43 N., R. 71 W., 6th Principal Meridian
Sec. 23, lots 1 through 16 inclusive;
Sec. 26, lots 1 through 16 inclusive;
Sec. 35, lots 1 through 16, inclusive.

Containing 1,976.69 acres, more or less, in Campbell County, Wyoming.

The tract is adjacent to the southern and western lease boundary of the Black Thunder Mine. The tract is adjacent to Federal leases to the east and north controlled by the Black Thunder mine as well as an adjacent State of Wyoming lease also controlled by the Black Thunder mine. It is adjacent to additional unleased Federal coal to the west and south.

Most of the acreage offered has been determined to be suitable for mining. The acreage coincident with the main line railroad right-of-way along the western boundary of the tract is not suitable for mining. Features such as utilities and pipelines can be moved to permit coal recovery. In addition, numerous producing coal bed natural gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells and the successful coal lessee's interaction with gas producers regarding any pre-existing rights of such producers. An economic analysis of this future income stream will consider reasonable compensation for lost production when the wells are bought out since mining will eliminate the gas reservoir. Some of the surface estate of the tract is owned by Thunder Basin Coal Company, but most of the surface is part of the Thunder Basin National Grassland managed by the United States Forest Service.

The tract contains surface mineable coal reserves in the Wyodak-Anderson coal zone currently being recovered in the adjacent, existing mine. On the LBA tract, there are generally two recoverable seams, the shallower Upper Wyodak and the deeper Middle Wyodak. The Upper Wyodak is found in the northern third of the LBA and averages about 13 feet thick. The Middle Wyodak is the primary coal seam and is continuous over the entire LBA. It varies from 67 feet to 75 feet thick. The interburden between the Upper and Middle Wyodak seams varies in thickness from 41 feet to 118 feet. There are up to three thin seams that split from the bottom of the Middle Wyodak which are generally mineable only when they are merged with the Middle Wyodak seam. Overburden depths to the top of the Upper Wyodak seam range from about 170 feet to 400 feet on the LBA.

The tract contains an estimated 222,676,000 tons of mineable coal. This estimate of mineable reserves includes both of the seams mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. The estimated reserve excludes coal within and along the railroad right-of-way as required by typical mining practices. The total mineable stripping ratio of the coal in bank cubic yards per ton is approximately 4.2:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The South Hilight Field LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 9,011 British Thermal Units per pound containing approximately 0.27 percent sulfur. These quality averages place the coal reserves at the high end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time, on Tuesday, December 13, 2011, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods. No coal is to be mined by underground methods since the only coal resources to be offered are those coal resources recoverable by surface mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

This LBA was initiated before the case-by-case cost recovery fees at 43 CFR 3473.2(f) became effective. Therefore, case-by-case processing fees are not applicable to this lease sale. See 43 CFR 3000.10(d).

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the address above. Case file documents, WYW174596, are available for inspection at the BLM Wyoming State Office.

Donald A. Simpson,

State Director.

[FR Doc. 2011–26744 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON01000 L16100000.DP0000]

Notice of Availability of Record of Decision for the Little Snake Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Little Snake Field Office located in northwest Colorado. The Colorado State Director signed the ROD in October 2011, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP are available upon request from the Little Snake Field Office, Bureau of Land Management, 455 Emerson St., Craig, Colorado 81625 or at the following Web site: *http://www.blm.gov/co/st/en/fo/lsfo/plans/rmp_revision.html.* Copies of the ROD are also available for public inspection at the following location: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: For further information contact Matt Anderson, Associate Field Manager/RMP Project Manager, Little Snake Field Office, telephone (970) 826–5000, at the address above, or e-mail: *m40ander@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (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 planning area is located in northwest Colorado in Moffat, Routt, and Rio Blanco counties. The plan provides management decisions on approximately 1.3 million acres of BLM-administered public lands and 1.1 million acres of BLM-administered subsurface mineral estate.

The Little Snake Field Office has worked extensively with interested and affected groups, individuals and cooperating agencies to develop the ROD/RMP. Cooperating agencies

include: Moffat County, Colorado Department of Natural Resources; U.S. Fish and Wildlife Service, Division of Ecological Services, the City of Steamboat Springs; and the Juniper Water Conservancy District. An independent stewardship group called the Northwest Colorado Stewardship participated in the Draft RMP/Draft Environmental Impact Statement (EIS) collaborative process.

The management actions in the ROD/RMP seek a balance of resource protection and resource use. Some of the key decisions in the ROD are:

- Seven Special Recreation Management Areas are designated in the ROD.
- Irish Canyon is designated as an Area of Critical Environmental Concern (ACEC). The ACEC objective would be to protect sensitive plants, remnant plant communities, cultural and geologic values, and scenic quality. Several areas formerly managed as ACECs are not designated as ACECs in the ROD because they were deemed as not warranting special management attention. These areas are: Lookout Mountain, Limestone Ridge, and Cross Mountain Canyon ACECs. Management prescriptions would still be in place to protect relevant and important values in these areas.
- The ROD outlines management actions to protect wilderness characteristics in 4 areas of the planning area: Cold Springs Mountain, Vermillion Basin, Dinosaur North, and Little Yampa Canyon. The management objectives for these areas would be to protect naturalness, opportunities for semi-primitive recreation and solitude. Cold Spring Mountain, Dinosaur North and Vermillion Basin are closed to oil and gas leasing and development. Little Yampa Canyon is subject to no surface occupancy stipulations.
- The majority of lands (86 percent) within the Little Snake Field Office will be Limited to Existing Routes or Limited to Designated Routes in the ROD. Seven percent will be open to cross country travel, and 6 percent will be closed to motorized vehicle use.
- Many wildlife populations are protected by timing limitation stipulations and no surface occupancy buffers around nests.
- The majority (more than 90 percent) of recoverable fluid minerals can be developed within the constraints of the ROD.
- Disturbance limits are placed in areas of important wildlife habitat, especially sagebrush ecosystems.
- The ROD lays out a framework that would allow the BLM to use ''adaptive management'' at the implementation stage, giving the BLM greater flexibility and promoting proactive management.

The Approved RMP was prepared under the authorities of the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969. The BLM released the Draft RMP/Draft EIS for a 90-day public review period in February 2007. The BLM released the Proposed RMP/Final EIS in August 2010. The Approved RMP is nearly identical to the Proposed Plan (Alternative C) presented in the 2010 Proposed RMP/Final EIS. No inconsistencies were identified during the Governor's consistency review of the Proposed RMP/Final EIS. Decisions in the ROD are land use planning decisions that are protestable under BLM planning regulations (43 CFR subpart 1610.5). The BLM received 8 valid protest letters during the 30-day protest period after publishing the Proposed RMP/Final EIS. The BLM Director addressed all the protests without making significant changes to the Proposed RMP; minor corrections and clarifications are included in the ''Clarifications'' section of the ROD. There are no appealable decisions included in the ROD, as the ROD did not include any implementation-level decisions.

Anna Marie Burden,

Acting Colorado State Director.

Authority: 40 CFR 1506.6; 43 CFR 1610.2(g), 1610.5–1(b).

[FR Doc. 2011–26737 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L14200000–BJ0000: HAG12–003]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 19 S., R. 8 W., accepted September 19, 2011.
T. 24 S., R. 7 W., accepted September 19, 2011.
T. 3 W., R. 5 E., accepted September 23, 2011.
T. 8 S., R. 4 E., accepted September 23, 2011.
T. 29 S., R. 8 W., accepted September 23, 2011.
T. 40 S., R. 10 E., accepted September 23, 2011.
T. 18 S., R. 14 E., accepted September 29, 2011.
T. 18 S., R. 13 E., accepted September 29, 2011.
T. 26 S., R. 3 W., accepted September 29, 2011.
T. 8 S., R. 10 E., accepted September 29, 2011.
T. 38 S., R. 2 E., accepted September 30, 2011.

Washington

T. 30 N., R. 5 E., accepted September 29, 2011.
T. 10 N., R. 16 E., accepted September 29, 2011.
T. 36 N., R. 4 W., accepted September 29, 2011.
T. 33 and 34 N., R. 2 E., accepted September 30, 2011.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW., 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204. 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: 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.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2011–26799 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–WAPC–0911–8447; 2031–A048–409]

Big Cypress National Preserve Off-Road Vehicle Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of Renewal.

SUMMARY: The Secretary of the Interior is giving notice of renewal of the Big Cypress National Preserve Off-Road Vehicle Advisory Committee to offer recommendations, alternatives and possible solutions to management of off-road vehicles at Big Cypress National Preserve.

FOR FURTHER INFORMATION CONTACT: Pedro Ramos, Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail E, Ochopee, Florida 34141; 239–695–1103.

SUPPLEMENTARY INFORMATION: The Big Cypress National Preserve Off-Road Vehicle Advisory Committee has been established as directed in the *Off-Road Vehicle Management Plan, 2000.* This plan guides the National Park Service in its management of recreational off-road vehicle (ORV) use in Big Cypress National Preserve, and tiers off of the Preserve's 1991 General Management Plan. The National Park Service agreed to prepare an ORV management plan as part of a settlement agreement negotiated in 1995 between the Florida Biodiversity Project and several Federal agencies and bureaus. The agreement settled a lawsuit which alleged failure by the agencies to comply with Federal statutes, including the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act.

The *Off-Road Vehicle Management Plan, 2000* (p. 29) states ''Under the proposed action, the National Park Service would establish an advisory committee of concerned citizens to examine issues and make recommendations regarding the management of ORVs in the Preserve. The establishment of the committee meets the legal requirements of the 1972 Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 1972, as amended). The advisory committee provides access to the extensive knowledge available in the public arena and offers advice to the National Park Service in the decision-making process in a manner consistent with FACA. This committee is an element of the adaptive management approach used to develop best management practices for ORV use.''

As part of the ORV management plan, NPS committed to establishing the ORV Advisory Committee. In addition, the establishment of the Committee fulfills the agency's policy of civic engagement. This committee strengthens the relationship that the NPS has with its partners and communities. The Committee is composed of individuals that represent (1) Sportsmen/ORV users; (2) landowners; (3) academia; (4) environmental advocates; (5) the state government, and (6) Tribes.

Certification: I hereby certify that the renewal of the Big Cypress Off-Road Vehicle Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.,* and other statutes relating to the administration of the National Park System.

Dated: October 3, 2011.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2011–26699 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–V6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of November 5, 2011 meeting.

SUMMARY: This notice sets forth the date of the November 5, 2011, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, November 5, 2011, from 10 a.m. to 1 p.m. (Eastern).

Location: The meeting will be held at the Flight 93 National Memorial Office, 109 West Main Street Suite 104, Somerset, PA 15501.

Agenda

The November 5, 2011, will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from July 30, 2011.
3. Reports from the National Park Service and Flight 93 National Memorial Partners.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Keith E. Newlin, Superintendent, Flight 93 National Memorial, P.O. Box 911, Shanksville, PA 15560, (814) 893–6322.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, P.O. Box 911, Shanksville, PA 15560. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 27, 2011.

Keith E. Newlin,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2011–26708 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0911–8554; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 24, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 1, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to

withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Kameny, Dr. Franklin E., House, 5020 Cathedral Ave., NW., Washington, 11000773

GEORGIA

DeKalb County

Ponce de Leon Court Historic District, Ponce de Leon Ct., Decatur, 11000774

Glynn County

Glynn Academy, SE. corner of Egmont & Monck Sts., Brunswick, 11000775

Polk County

South Philpot Street Historic District, Roughly bounded by S. Philpot St., East Ave, E. Ware & Park Sts., Cedartown, 11000776

IDAHO

Ada County

Bushnell—Fisher House, 349 W. State St., Eagle, 11000777

ILLINOIS

Cook County

Creamery Package Manufacturing Company Building, 1245 W. Washington Blvd., Chicago, 11000778

Rozek, Theodore, House, 6337 N. Hermitage Ave., Chicago, 11000779

LOUISIANA

Orleans Parish

Mid-City Historic District (Boundary Increase and Decrease), Roughly bounded by City Park Ave., St. Louis St., Claiborne Ave. & I10., New Orleans, 11000780

MAINE

York County

Vines, Richard, Monument, (Colonial Revival 'Artefacts' in York County, Maine MPS) 56 Bridge Rd., Biddeford, 11000781

MINNESOTA

Lake County

Halfway Ranger Station, MN 1 (Fall Lake Township), Ely, 11000782

MISSOURI

Howell County

International Shoe Company Building, 665 Missouri Ave., West Plains, 11000783

St. Louis County

Old Ferguson West Historic District, (Ferguson, Missouri, MPS) Roughly bounded by Carson Rd., Harvey & Tiffin Aves. & Florissant Rd., Ferguson, 11000784

NEVADA

Carson City Independent City

West Side Historic District, Roughly bounded by Curry, Mountain, 5th & John Sts., Carson City (Independent City), 11000785

NORTH DAKOTA

Burleigh County

Forence Lake School No. 3, 10 mi. N. of Wing off ND 14, Wing, 11000786

SOUTH DAKOTA

Minnehaha County

First National Bank of Garretson, 605 Main St., Garretson, 11000787

WISCONSIN

Racine County

Melvin Avenue Residential Historic District, Melvin Ave. generally bounded by Erie 7 N. Main Sts., Racine, 11000788

A request for REMOVAL has been made for the following resource:

MAINE

Androscoggin County

Cowan Mill Island Mill St., Lewiston, 85001656

[FR Doc. 2011–26692 Filed 10–14–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–KAHO–0824–8270; 8320–SZM]

Request for Nominations for the Na Hoa Pili O Kaloko-Honokohau Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of request for nominations for the Na Hoa Pili O Kaloko-Honokohau Advisory Commission.

SUMMARY: The National Park Service, U.S. Department of the Interior, proposes to appoint new members to the Na Hoa Pili O Kaloko-Honokohau (The Friends of Kaloko-Honokohau), an Advisory Commission for the park. The Superintendent, Kaloko-Honokohau National Historical Park, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the Commission.

DATES: Nominations must be postmarked not later than December 16, 2011.

ADDRESSES: Nominations or requests for further information should be sent to Kathy Billings, Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani Street, Suite #14, Kailua-Kona, Hawaii 96740.

SUPPLEMENTARY INFORMATION: The scope and objectives of the Kaloko-Honokohau National Historical Park Advisory Commission are as follows: The Kaloko-Honokohau National Historical Park was established by § 505(a) of Public Law 95–625, November 10, 1978, as amended. § 505(f) of that law, as amended, established the Na Hoa Pili O Koloko-Honokohau (The Friends of Kaloko-Honokohau), as advisory commission for the park. The Commission was re-established by Title VII, Subtitle E, Section 7401 of Public Law 111–11, the Omnibus Public Land Management Act of 2009, March 30, 2009. The Commission's new termination date is December 18, 2018.

The purpose of the Commission is to advise the Superintendent and the Director, National Park Service, with respect to the historical, archeological, cultural, and interpretive programs of the park. The Commission is to afford particular emphasis to the quality of traditional Native Hawaiian cultural practices demonstrated in the park. For the purposes of § 505(e), native Hawaiians are defined as any lineal descendents of the race inhabiting the Hawaiian Islands prior to the year 1778.

The Commission shall consist of nine members, each appointed by the Secretary of the Interior, and four ex officio non-voting members, as follows: (a) All nine Secretarial appointees will be residents of the State of Hawaii, and at least six of those appointees will be native Hawaiians; (b) Native Hawaiian organizations will be invited to nominate members, and at least five members will be appointed from those nominations to represent the interests of those organizations. The other four members will represent Native Hawaiian interests; (c) The nine voting members will be appointed for 5-year terms except that initial appointment(s) shall consist of two members appointed for a term of five years, two for a term of four years, two for a term of three years, two for a term of two years, and one for a term of one year. No member may serve more than one term consecutively. Any vacancy in the Commission shall be filled by appointment for the remainder of the term; (d) The four *ex officio* members include the Park Superintendent, the NPS Pacific West Region Pacific Islands Director, one person appointed by the Governor of Hawaii, and one person appointed by the Mayor of the County of Hawaii.

The Secretary of the Interior shall designate one member of the Commission to be Chairperson. Members of the Commission will receive no pay, allowances, or benefits by reason of their service on the Commission. However, while away from

their homes or regular places of business in the performance of services for the Commission as approved by the DFO, members will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under § 5703 of Title 5 of the United States Code.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils.

Submitting Nominations: Nominations should be typed and must include each of the following:

A. Brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the Commission.

B. Resume or curriculum vitae.

C. At least one (1) letter of reference.

All required documents must be compiled and submitted in one complete nomination package. This office will not assemble nomination packages from documentation sent piecemeal. Incomplete submissions (missing one or more of the items described above) will not be considered.

Dated: June 21, 2011.

Kathy Billings,

Superintendent, Koloko-Honokohau National Historical Park.

[FR Doc. 2011–26713 Filed 10–14–11; 8:45 am]

BILLING CODE 4312–GH–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

National Park Service

Notice To Solicit Comments and Hold Public Scoping Meetings on the Adoption of a Long-term Experimental and Management Plan for the Operation of Glen Canyon Dam

AGENCY: Bureau of Reclamation and National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department), through the Bureau of Reclamation and the National Park Service, provided notice on July 6, 2011, that the Department intends to prepare an environmental impact statement (EIS) and conduct public scoping meetings for the adoption of a Long-term Experimental and Management Plan (LTEMP) for the operation of Glen Canyon Dam. This **Federal Register** notice provides specific information on upcoming public scoping meetings and identifies the relevant comment period.

DATES: Comments on the scope of the EIS will be accepted until close of business on Friday, December 30, 2011.

Six public scoping meetings and one web-based meeting will be held to solicit public input on the scope of the environmental document, potential alternatives, and issues to be addressed in the EIS. See **SUPPLEMENTARY INFORMATION** section for meeting dates.

For specific information about the web-based meeting (date, time, etc.), please refer to the project Web site at: *http://ltempeis.anl.gov.*

ADDRESSES: You may submit comments by the following methods:

- Web site: *http://ltempeis.anl.gov.*
- Mail: Glen Canyon LTEMP EIS Scoping, Argonne National Laboratory, EVS/240, 9700 S. Cass Avenue, Argonne, Illinois 60439.

See **SUPPLEMENTARY INFORMATION** section for locations of public scoping meetings.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Beverley Heffernan, Bureau of Reclamation, Upper Colorado Region, Attention: UC–700, 125 South State Street, Salt Lake City, Utah 84138–1147; facsimile (801) 524–3826; or visit the Glen Canyon LTEMP EIS Web site at: *http://ltempeis.anl.gov.* Persons who use a telecommunications device for the deaf 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: In a **Federal Register** notice published on July 6, 2011 (76 FR 39435), and pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and 40 CFR 1508.22, the Department provided notice that it would prepare an EIS and conduct public scoping meetings for the adoption of an LTEMP for the operation of Glen Canyon Dam.

The purpose of the proposed LTEMP is to inform Departmental decisions and operate Glen Canyon Dam in such a manner as to improve and protect downstream resources in Glen Canyon National Recreation Area and Grand Canyon National Park while maintaining compliance with relevant laws, including the 1992 Grand Canyon Protection Act (GCPA), the Law of the River, and the Endangered Species Act (ESA). The LTEMP process is intended to develop and implement a structured, long-term experimental and management plan, to determine the need for potential future modifications to Glen Canyon Dam operations, and to determine whether to establish an ESA Recovery Implementation Program for endangered fish species below Glen Canyon Dam.

Revised dam operations and other actions under the jurisdiction of the Secretary of the Interior will be considered within alternatives of the EIS, in keeping with the scope of the GCPA. The NEPA process will document and evaluate impacts of the alternatives described in the EIS.

Scoping Information

Six public scoping meetings will be held to solicit comments on the scope of the LTEMP and the potential issues and alternatives that may be considered.

Each scoping meeting will include a welcome and project overview session (15 minutes) and opportunities for the public to view exhibits, informally discuss issues, and ask questions of technical experts and managers. Stations will be available for participants to provide electronic and written comments for the record. Comments should focus on the issues relevant to the proposed Federal action published in the July 6, 2011, **Federal Register** notice (76 FR 39435). To be most effectively considered, comments should be received no later than close of business on Friday, December 30, 2011. Those not desiring to submit comments during the scoping period, but who would like to receive a copy of the draft EIS (DEIS), may register their address at a public scoping meeting or on the project Web site at *http://ltempeis.anl.gov.* Public availability of the DEIS will be announced in the **Federal Register,** in the local news media, through direct contact with interested parties, and on the project Web site. Comments will be solicited on the DEIS at that time.

Dates and Addresses of Public Scoping Meetings

The scoping meeting dates and addresses are:

- Monday, November 7, 2011, 6 to 8 p.m., Sheraton Crescent Hotel, 2620 W. Dunlap Avenue, Phoenix, Arizona 85201.
- Tuesday, November 8, 2011, 6 to 8 p.m., Radisson Woodlands Hotel Flagstaff, 1175 W. Route 66, Flagstaff, Arizona 86001.
- Wednesday, November 9, 2011, 6 to 8 p.m., Courtyard Page at Lake Powell, 600 Clubhouse Drive, Page, Arizona 86040.

• Tuesday, November 15, 2011, 6 to 8 p.m., Hilton Salt Lake City Center, 255 South West Temple, Salt Lake City, Utah 84101.

• Wednesday, November 16, 2011, 6 to 8 p.m., Ramada Las Vegas, 325 East Flamingo Road, Las Vegas, Nevada 89169.

• Thursday, November 17, 2011, 6 to 8 p.m., Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, Colorado 80228.

Public Disclosure

Before including a name, address, telephone number, e-mail address, or other personal identifying information in the comment, please be advised that the entire comment—including personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 5, 2011.

Anne J. Castle,

Assistant Secretary—Water and Science.

Rachel Jacobson,

Acting Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 2011–26651 Filed 10–14–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–638 (Third Review)]

Stainless Steel Wire Rod From India; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Stainless Steel Wire Rod From India

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on stainless steel wire rod from India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 6, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 38686, July 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on November 10, 2011 and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before November 16, 2011 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by November 16, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011) available on the Commission's Web site at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26669 Filed 10–14–11; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner Daniel R. Pearson concluded that both the domestic group response and the respondent group response for this review were adequate and voted for a full review.

[3] The Commission has found the responses submitted by Carpenter Technology Corporation, North American Stainless, and Mukand Ltd. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–410 (Third Review)]

Light-Walled Rectangular Pipe From Taiwan; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Light-Walled Rectangular Pipe From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on light-walled rectangular pipe from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Stefania Pozzi Porter (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 38691, July 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 8, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 13 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 13. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26666 Filed 10–14–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–540–541 (Third Review)]

Certain Welded Stainless Steel Pipe From Korea and Taiwan; Scheduling of Expedited Five-Year Reviews Concerning the Antidumping Duty Orders on Certain Welded Stainless Steel Pipe From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on certain welded stainless steel pipe (specifically ASTM A–312 pipe) from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Stefania Pozzi Porter (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain

[1] A record of the Commissioners= votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Chairman Deanna Tanner Okun, Vice Chairman Irving A. Williamson, and Commissioners Daniel R. Pearson, Shara L. Aranoff, and Dean A. Pinkert found that the domestic group response was adequate and the respondent group response was inadequate and voted for an expedited review. Commissioner Charlotte R. Lane found that the domestic group response was adequate and the respondent group response was inadequate but that circumstances warranted a full review.

[3] The Commission has found the responses submitted by Allied Tube, Bull Moose Tube, JMC Steel, Leavitt Tube, California Steel and Tube, Hannibal Industries, and Searing Industries to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 38688, July 1, 2011) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 27, 2011, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before November 1 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 1. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26667 Filed 10–14–11; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Bristol Metals LLC, Felker Brothers Corp., Mercegaglia USA Inc., and Outokumpu Stainless Pipe to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–C; Third Review]

Uranium From Russia; Scheduling of an Expedited Five-Year Review Concerning the Suspended Investigation on Uranium From Russia

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2011, the Commission determined [1] that the domestic interested party group response to its notice of institution (76 FR 38694, July 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[3]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 19, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued

[1] Chairman Deanna Tanner Okun did not participate.

[2] Commissioner Charlotte R. Lane dissented, instead finding that other circumstances warranted conducting a full review.

[3] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[4] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 22, 2011 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 22, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended (76 FR 61937, October 6, 2011), and the Commission's Handbook on Filing Procedures (76 FR 62092, October 6, 2011), available on the Commission's Web site at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26665 Filed 10–14–11; 8:45 am]

BILLING CODE 7020–02–P

[4] The Commission has found the responses submitted by Power Resources, Inc.; Crow Butte Resources, Inc.; and USEC Inc. and the United States Enrichment Corp. (collectively, ''USEC'') to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–785]

In the Matter of Certain Light-Emitting Diodes and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 8) of the presiding administrative law judge (''ALJ'') granting complainant's motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 11, 2011, based on two complaints filed by OSRAM GmbH (now OSRAM AG) (''OSRAM'') of Munich, Germany. 76 FR 40746–47. The complaints allege violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,812,500; 7,078,732; 7,126,162; 7,345,317; 7,629,621; 6,459,130; 6,927,469; 7,199,454; and 7,427,806. The complaints further allege the existence of a domestic industry. The Commission's notice of investigation named the following respondents: Samsung Electronics Co., Ltd. of Gyeonggi-do, Korea; Samsung LED Co., Ltd. of Gyeonggi Province, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung LED America, Inc. of Atlanta, Georgia; LG Electronics, Inc. and LG Innotek Co., Ltd., both of Seoul, South Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Innotek U.S.A., Inc. of San Diego, California.

On September 6, 2011, OSRAM filed a motion to amend the complaint and notice of investigation to reflect a corporate name change from OSRAM GmbH to OSRAM AG, to correct the addresses of Samsung Electronics Co., Ltd. and Samsung LED Co., Ltd., and to make other typographical changes.

On September 19, 2011, the ALJ issued the subject ID granting the motion to amend the complaint and notice of investigation. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a). The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(h).

By order of the Commission.

Issued: October 11, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26668 Filed 10–14–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP; BJA; Docket No. 1571]

Meeting of the Department of Justice's (DOJ's) National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee to discuss various issues relating to the operation and implementation of NMVTIS.

DATES: The meeting will take place on Wednesday, November 2, 2011, from 8:30 a.m. to 4:30 p.m. E.T.

ADDRESSES: The meeting will take place at the Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202; *Phone:* (703) 920–8600.

FOR FURTHER INFORMATION CONTACT: Alissa Huntoon, Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Northwest, Washington, DC 20531; *Phone:* (202) 305–1661 [**Note:** This is not a toll-free number]; *e-mail: Alissa.Huntoon@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Members of the public who wish to attend this meeting must register with Ms. Alissa Huntoon at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Please bring photo identification and allow extra time prior to the meeting. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Anyone requiring special accommodations should notify Ms. Huntoon at least seven (7) days in advance of the meeting.

Purpose

The NMVTIS Federal Advisory Committee will provide input and recommendations to the Office of Justice Programs (OJP) regarding the operations and administration of NMVTIS. The primary duties of the NMVTIS Federal Advisory Committee will be to advise the Bureau of Justice Assistance (BJA) Director on NMVTIS-related issues, including but not limited to: Implementation of a system that is self-sustainable with userfees; options for alternative revenue-generating opportunities; determining ways to enhance the technological capabilities of the system to increase its flexibility; and options for reducing the economic burden on current and future reporting entities and users of the system.

Todd Brighton,

NMVTIS Enforcement Coordinator, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2011–26684 Filed 10–14–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Extension of a Currently Approved Information Collection: Labor Condition Application and Instructions for H–1B, H–1B1, and E–3 Nonimmigrants; Forms ETA 9035, ETA 9035E and ETA 9035CP and WHD Nonimmigrant Worker Information Form WH–4, OMB Control No. 1205–0310

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, is conducting a pre-clearance consultation to provide the general public and Federal agencies with an opportunity to comment on the continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3506(c)(2)(A). The Department undertakes this consultation to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Through this notice, the Employment and Training Administration (ETA) is soliciting comments concerning the extension of the approval for the information collection, Office of Management and Budget (OMB) Control Number 1205–0310, containing Form ETA 9035—*Labor Condition Application for Nonimmigrant Workers;* Form ETA 9035E—*Labor Condition Application for Nonimmigrants* (electronic version); Form ETA 9035CP—*General Instructions for the 9035 & 9035E;* Form ETA 9035CP Appendix I—*Mapping of 3–Digit DOT Codes to SOC/O*NET Job Titles;* Form ETA 9035CP Appendix II—*Sample of Acceptable Wage Survey Sources;* and Wage and Hour Division (WHD) Form WH–4—*Nonimmigrant Worker Information Form,* which expire on January 31, 2012. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Please submit written comments to the office listed in the addressee section below on or before December 16, 2011.

ADDRESSES: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Ave., NW., Washington, DC 20210; by phone at (202) 693–3010 (this is not a toll-free number); by fax at (202) 693–2768; or by e-mail at *ETA.OFLC.Forms@dol.gov* subject line: Form ETA 9035.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(n) and (t) and 1184(c)). The Department and the Department of Homeland Security have promulgated regulations to implement the INA. Specifically for this collection, 20 CFR 655 Subparts H and I and 8 CFR 214.2(h)(4) are applicable. The INA mandates that no alien may enter the United States (U.S.) for the purpose of performing professional work on a temporary basis unless the U.S. employer has attested to the Secretary of Labor (Secretary) that the working conditions for the alien will not adversely affect the working conditions of similarly employed U.S. workers; that the salary will be at least the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question– whichever is higher; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that the employer has met all other requirements of the program as specified in the regulations.

II. Review Process

The Department is particularly interested in comments which:

- 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 Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to apply for labor condition applications to allow them to bring foreign labor to the U.S. on a temporary basis.

In the past the respondents have been for-profit businesses and not-for-profit institutions. On rare occasions the respondents have been local, State, tribal governments, or the Federal government.

The Secretary uses the collected information to determine if employers are meeting their statutory and regulatory obligations. The information collected remains the same.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title(s): Labor Condition Application for H–1B, H–1B1, and E–3 Nonimmigrants and *Nonimmigrant Worker Information Form.*

OMB Number: 1205–0310.

Agency Form(s): Forms ETA 9035, ETA 9035E, ETA 9035CP and WHD Form WH–4

Recordkeeping: On occasion.

Affected Public: Businesses or other for-profits, not-for-profits, States, local governments, and tribal governments.

Total Respondents: 77,425.

Estimated Total Burden Hours: 325,006.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

The Department will summarize and/or include comments submitted in response to this comment request in its request for OMB approval of the information collection. The comments will also become a matter of public record.

Signed in Washington, DC, this 28th of September 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–26745 Filed 10–14–11; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AB71

Safety and Health Management Programs for Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Mine Safety and Health Administration (MSHA) is holding a public meeting, and plans to hold additional public meetings, to gather more information on effective safety and health management programs to eliminate hazards and prevent injuries and illnesses at mines. Safety and health management programs are an important component of helping mine operators assure the safety and health of miners at their mines. MSHA encourages representatives from academia, safety and health professionals, industry organizations, worker organizations, government agencies, industries other than mining, and international organizations to present information on their model programs. MSHA believes that effective safety and health management programs in mining will create a sustained industry-wide effort to eliminate hazards and will result in the prevention of injuries and illnesses.

DATES: *Public Meeting Date:* The public meeting will be held on November 10, 2011, at the location listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

Comment Dates: MSHA will hold the date for comments open until all meetings are held, at which point MSHA will notify the public of the date the comment period will close.

ADDRESSES: Comments must be identified with ''RIN 1219–AB71'' and may be sent to MSHA by any of the following methods:

(1) *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *Facsimile:* 202–693–9441.

(3) *Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *fontaine.roslyn@dol.gov* (e-mail); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Availability of Information

Public Comments

MSHA posts all comments without change, including any personal information provided. Access comments electronically at *http://www.regulations.gov* and on *http://www.msha.gov/currentcomments.asp.* Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

E-mail notification

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

II. Public Meeting

The public meeting will begin at 1 p.m. and conclude at 5 p.m., or until the last speaker speaks. The agenda for the meeting will include:

• Registration,
• Opening Statement,
• Presentations,
• Comments from the Public, and
• Closing Statement.

MSHA invites academia, safety and health professionals, industry organizations, worker organizations, government agencies, and industries outside of mining, as well as international organizations to participate by making a presentation or by providing information on their model programs for best practices for safety and health management programs. Requests to present at the meeting may be made by telephone (202–693–9440), facsimile (202–693–9441), or mail (MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939).

The meeting will be conducted in an informal manner. Presenters and attendees may provide written information to the court reporter for inclusion in the rulemaking record. MSHA will make transcripts of the meetings available on MSHA's Web site at: *http://www.msha.gov/tscripts.htm*, and include them in the rulemaking record.

The meeting will be held in conjunction with the 6th Annual Southeastern Mining Safety and Health Conference on November 10, 2011, in Birmingham, Alabama. The meeting will be held at the Renaissance

Birmingham Ross Bridge Golf Resort and Spa, in the Conference Center Ballroom, 4000 Grand Ave., Hoover, Alabama 35226, phone 1–800–949–4444.

Additional public meetings will be held, to the extent possible, in conjunction with other safety and health events. MSHA will announce these meetings in the **Federal Register** and post them on the Agency's Web site.

III. MSHA and OSHA Regulatory Initiatives

A. MSHA Rulemakings

MSHA believes that operators with effective safety and health management programs would identify and correct hazards more quickly, resulting in fewer accidents, injuries, and illnesses. In the past year, MSHA published two proposed rules that are complementary to the Agency's initiative to develop safety and health management programs for mines. In December 2010, MSHA published a proposed rule addressing Examinations of Work Areas in Underground Coal Mines (75 FR 81165). This proposed rule is a critical element in the Secretary of Labor's ''Plan, Prevent, and Protect'' strategy and an important part of an effective safety and health management program for underground coal mines.

In February 2011, MSHA published a proposed rule addressing Pattern of Violations (76 FR 5719). The proposed rule would revise the Agency's existing regulation for pattern of violations (POV). Congress included the POV provision in the Mine Act so that operators would manage safety and health conditions at mines and find and fix the root causes of significant and substantial violations to protect the safety and health of miners.

B. OSHA's Injury and Illness Prevention Programs

The Occupational Safety and Health Administration (OSHA) has announced rulemaking on Injury and Illness Prevention Programs (I2P2) which is similar to this regulatory initiative. In 2010, the OSHA held five stakeholder meetings on I2P2 soliciting information about safety and health management programs for the general industry.

IV. Background and Request for Comments

MSHA has reviewed a number of guidelines for safety and health management programs and noted that the components of effective safety and health management programs generally include:

- Management Commitment.
- Worker Involvement.
- Hazard Identification, including workplace inspections for violations of mandatory health and safety standards.
- Hazard Prevention and Control.
- Safety and Health Training.
- Program Evaluation.

MSHA held three public meetings in October 2010, gathering information and comments from the safety and health community about effective, comprehensive safety and health management programs (75 FR 54804). Presenters included representatives from academia, safety and health professionals, industry and worker organizations (including mining), and government agencies that provided information on best practices for safety and health programs.

MSHA is now interested in receiving information about safety and health management programs developed and implemented during the past five years, particularly those implemented in the last year.

MSHA is interested in statistical results, lessons learned, and new and innovative approaches from different sectors of the mining industry and from small mines.

To supplement the information the Agency has already received, MSHA will hold additional meetings. MSHA is interested in safety and health management programs that have shown results in:

- Reduced injury and illnesses.
- Increased safety and health results.
- Improved conditions in certain areas, (e.g. haulage, roof and rib, combustible materials, health hazards).
- Improved compliance.
- Improved communication.
- Increased productivity.
- Increased and improved worker and management involvement in the development of safety and health programs including training; and
- Increased morale.

The Agency is interested in statistical results from companies and organizations that have programs that are effective and measurable. MSHA is also interested in safety and health management programs from industries other than mining, and safety and health management programs in other countries.

The Agency is interested in receiving comments on all aspects of safety and health management programs. The meetings will provide MSHA with current information and views from a wide range of interests.

Dated: October 7, 2011.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2011–26474 Filed 10–13–11; 11:15 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–087)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Thursday, November 3, 2011, 8 a.m.–5 p.m., Local Time Friday, November 4, 2011, 8 a.m.—12 p.m., Local Time.

ADDRESSES: NASA Goddard Space Flight Center (GSFC), Building 1, Rooms E100 D and E, 8800 Greenbelt Road, Greenbelt, MD 20771–0001. (Note that visitors will first need to go to the GSFC Main Gate to be gain access.)

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NASA Advisory Council Administrative Officer, National Aeronautics and Space Administration, Washington, DC, 20546, 202–358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include reports from the Council Committees:

—Aeronautics
—Audit, Finance and Analysis
—Commercial Space
—Education and Public Outreach
—Human Exploration and Operations
—Information Technology Infrastructure
—Science
—Technology and Innovation

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial access number, 1–866–763–9688 and then enter the numeric participant passcode: 9881819 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com/,* meeting number on November 3, 2011, is 994–272–311, and password # # 78k!23?P#. On Friday, November 4, 2011, the meeting number will be 994–272–311, and password # # 78k!23?P#. Visitors will need to show a valid picture

identification such as a driver's license to enter into the NASA Goddard Space Flight Center, and must state that they are attending the NASA Advisory Council meeting in Building 1. All U.S. citizens desiring to attend the NASA Advisory Council Meeting at the Goddard Space Flight Center (GSFC) must provide their full name, company affiliation (if applicable), to the GSFC Protective Services Division no later than the close of business on October 28, 2011.

All non-U.S. citizens must submit their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident card number and expiration date (if applicable), place and date of entry into the U.S., and passport information to include country of issue, number, and expiration date to the GSFC Security Office no later than the close of business on October 19, 2011.

If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will report to the Main Gate where they will be processed through security prior to entering GSFC. Please provide the appropriate data, via fax 301–286–1230, noting at the top of the page ''Public Admission to the NASA Advisory Council Meeting at GSFC.'' For security questions, please contact Pam Starling by phone at 301–286–6865, or by e-mail at *pamela.a.starling@nasa.gov*, or alternate Debbie Brasel by phone at 301–286–6876, or by e-mail at *deborah.a.brasel@nasa.gov.*

Dated October 7, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–26730 Filed 10–14–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–096]

NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Tuesday, November 1, 2011, 2 p.m.–5:15 p.m., Local Time.

Wednesday, November 2, 2011, 9 a.m.–9:55 a.m., Local Time.

ADDRESSES: Goddard Space Flight Center (GSFC). Building 1, Room E100H, Greenbelt Road, Greenbelt, MD 20771–0001 (Note that visitors will first need to go to the GSFC Main Gate to gain access.)

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, National Aeronautics and Space Administration Headquarters, Washington, DC, 20546, *Phone:* 202–358–2183.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes briefings on the following topics:

- Earned Value Management
- Open.gov Initiatives
- NASA Infrastructure
- Utilization of Space Assets
- Space Shuttle Property

The meeting will be open to the public up to the seating capacity of the room. Visitors will need to show valid picture identification such as a driver's license to enter into the NASA Goddard Space Flight Center, and must state that they are attending the NASA Advisory Council (NAC) Audit, Finance, and Analysis Committee meeting in Building 1. All U.S. citizens desiring to attend the NAC Audit, Finance, and Analysis Committee Meeting at the Goddard Space Flight Center (GSFC) must provide their full name, company affiliation (if applicable), to the GSFC Protective Services Division no later than the close of business on October 28, 2011. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), and place and date of entry into the U.S., and Passport information to include Country of issue, number, and expiration date to the GSFC Security Office no later than the close of business on October 19, 2011. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will report to the GSFC Main Gate where they will be processed through security prior to entering GSFC. Please provide the appropriate data, via fax 301–286–1230, noting at the top of the page ''Public Admission to the NASA Advisory Council Audit, Finance, and Analysis Committee Meeting at GSFC''. For security questions, please call Pam Starling at 301–286–6865 or *Pamela.a.starling@nasa.gov* or *Alternate:* Debbie Brasel at 301–286–6876 or *Deborah.a.brasel@nasa.gov.*

October 12, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–26804 Filed 10–14–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–091)]

Privacy Act of 1974; Privacy Act System of Records Appendices

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Revisions of NASA Appendices to Privacy Act System of Records.

SUMMARY: Notice is hereby given that NASA is amending the standard appendices that it regularly publishes with the Agency's systems of records under the Privacy Act of 1974. This notice publishes those amendments as set forth below under the caption **SUPPLEMENTARY INFORMATION**. In this notice, NASA (1) names an additional location, the NASA Shared Services Center, and (2) adds two new routine uses in Appendix B, the Agency's Standard Routine Uses, to ensure the Agency's ability to disclose records from systems to individuals engaged by NASA in performance of its activities, as well as to Members of Congress or their staffs seeing records on behalf of subjects of the records.

DATES: Submit comments on or before 30 calendar days from the date of this publication. These changes will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti F.

Stockman, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: Appendix A is amended to name a new NASA location 19, NASA Wallops Flight Facility. Appendix B is amended to set forth two new standard routine uses to enable the Agency to release records to (1) Agency contractors, grantees, volunteers, or others engaged by the Agency to assist in the accomplishment of its work and (2) members of Congress or their staffs when they are acting on behalf of an individual covered by a NASA system of records. These appendices are applicable as noted in every NASA System of Records notice.

Submitted by:

Linda Y. Cureton,

NASA Chief Information Officer.

Appendix A

Location Numbers and Mailing Addresses of NASA Installations at Which Records Are Located

Location 1

NASA Headquarters, National Aeronautics and Space Administration, Washington, DC 20546–0001.

Location 2

Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035–1000.

Location 3

Dryden Flight Research Center, National Aeronautics and Space Administration, PO Box 273, Edwards, CA 93523–0273.

Location 4

Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771–0001.

Location 5

Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058–3696.

Location 6

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899–0001.

Location 7

Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23681–2199.

Location 8

John H. Glenn Research Center at Lewis Field, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135–3191.

Location 9

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812–0001.

Location 10

HQ NASA Management Office—JPL, National Aeronautics and Space Administration, 4800 Oak Grove Drive, Pasadena, CA 91109–8099.

Location 11

John C. Stennis Space Center, National Aeronautics and Space Administration, Stennis Space Center, MS 39529–6000.

Location 12

JSC White Sands Test Facility, National Aeronautics and Space Administration, PO Drawer MM, Las Cruces, NM 88004–0020.

Location 13

GRC Plum Brook Station, National Aeronautics and Space Administration, Sandusky, OH 44870.

Location 14

MSFC Michoud Assembly Facility, National Aeronautics and Space Administration, PO Box 29300, New Orleans, LA 70189.

Location 15

NASA Independent Verification and Validation Facility (NASA IV&V), 100 University Drive, Fairmont, WV 26554.

Location 16

New Jersey Post of Duty, 402 East State Street, Trenton, NJ 08608.

Location 17

Western Field Office, Glenn Anderson Federal Building, 501 West Ocean Blvd., Long Beach, CA 90802–4222.

Location 18

NASA Shared Services Center (NSSC), Building 5100, Stennis Space Center, MS 39529–6000.

Location 19

NASA Wallops Flight Facility, Wallops Island, VA 23337.

Appendix B

Standard Routine Uses—NASA

The following routine uses of information contained in SORs, subject to the Privacy Act of 1974, are standard for many NASA systems. They are cited by reference in the paragraph ''Routine uses of records maintained in the system, including categories of users and the purpose of such uses'' of the **Federal Register** Notice on those systems to which they apply. Any disclosures of information will be compatible with the purpose for which the Agency collected the information.Standard Routine Use No. 1—In the event this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the SOR may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Standard Routine Use No. 2—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Standard Routine Use No. 3—A record from this SOR may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Standard Routine Use No. 4—A record from this system may be disclosed to the Department of Justice when (a) the Agency, or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

Standard Routine Use No. 5—A record from this system may be disclosed in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when: (a) The Agency, or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Agency is deemed to be relevant and necessary to the litigation, provided, however, that in each case, the Agency has determined that the disclosure is compatible with the purpose for which the records were collected.

Standard Routine Use No. 6—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) NASA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by NASA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist

in connection with NASA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Standard Routine Use No. 7—A record from this system may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an Agency function related to this system of records.

Standard Routine Use No. 8—A record from this system may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

[FR Doc. 2011–26731 Filed 10–14–11; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–093)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed revisions to an existing Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the National Aeronautics and Space Administration is issuing public notice of its proposal to significantly alter a previously noticed system of records Integrated Enterprise Management Program (IEMP)—Core Financial System/NASA 10IEM1. This notice publishes updates of this system of records under a new system name and number, as set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti F. Stockman, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: The NASA system of records previously titled and numbered Integrated Enterprise Management Program (IEMP)—Core Financial System/NASA 10IEM1 is being renamed and numbered Core Financial Management Records/NASA 10CFMR in order to reflect the specific nature of the records rather than a specific Information Technology system or organization responsible for records maintenance. In addition, minor modifications are being made to better clarify the categories of records maintained as well as their lengths of retention.

Submitted by:

Linda Y. Cureton,

NASA Chief Information Officer.

NASA 10CFMR

SYSTEM NAME:

Core Financial Management Records.

SECURITY CLASSIFICATION:

This system is categorized in accordance with OMB Circular A–11 as a Special Management Attention Major Information System. A security plan for this system has been established in accordance with OMB Circular A–130, Management of Federal Information Resources.

SYSTEM LOCATION:

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system of records include former and current NASA employees and non-NASA individuals requiring any type of payment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system are comprised of budget formulation, financial management, and employee timekeeping records and may include information about the individuals including Social Security Number (Tax Identification Number), home address, telephone number, email address, and bank account information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Aeronautics and Space Act of 1958, *et seq.* as amended. 42 U.S.C. 2473 (2003); Federal Records Act, 44 U.S.C. 3101 (2003); Chief Financial Officers Act of 1990 205(a), 31 U.S.C. 901 (2003); Financial Management Improvement Act of 1996 802, 31 U.S.C. 3512 (2003).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The following are routine uses: (1) Furnish data to the Department of Treasury for financial reimbursement of individual expenses, such as travel, books, and other miscellaneous items; (2) Process payments and collections in which an individual is reimbursing the Agency; (3) Ongoing administration and maintenance of the records, which is performed by authorized NASA employees, both civil servants and contractors; and (4) NASA Standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained on electronic media.

RETRIEVABILITY:

Records are retrieved from the system by name or SSN (Tax ID).

SAFEGUARDS:

An approved security plan for this system has been established in accordance with OMB Circular A–130, Management of Federal Information Resources. Individuals will have access to the system only in accordance with approved authentication methods. Only key authorized employees with appropriately configured system roles can access the system and only from workstations within the NASA Intranet.

RETENTION AND DISPOSAL:

Records are stored in the NASA Enterprise Application Competency Center (NEACC) database and managed, retained and dispositioned in accordance with the guidelines defined in the NASA Procedural Requirements (NPR) 1441.1D, NASA Records Retention Schedules, Schedule 9, Items 11, 13 and 16.

SYSTEM MANAGERS AND ADDRESSES:

IS01/Manager of the NEACC, George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the System Manager at the address given above.

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the address given above.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records, procedures for contesting the contents and for contesting the contents and for appealing initial determinations are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

The information is received by the NEACC Financial Systems through an electronic interface from the Federal Personnel Payroll System (FPPS). In certain circumstances, updates to this information may be submitted by NASA employees and recorded directly into the NEACC Financial Systems.

[FR Doc. 2011–26734 Filed 10–14–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–092)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of the retirement of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, NASA is giving notice that it proposes to cancel the following Privacy Act system of records notice, Biographical Records for Public Affairs (September 30, 2009, 74 FR 50247) as the records maintained are all published publicly.

DATES: This change will take effect 30 calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its biennial System of Records review efforts, NASA is cancelling the system of records notice, Biographical Records for Public Affairs (September 30, 2009, 74 FR 50247).

All information contained in these records on prominent NASA employees is provided voluntarily by the individuals themselves with the understanding their full biographies will be made publicly available by the Agency.

Submitted by:

Linda Y. Cureton,

NASA Chief Information Officer.

[FR Doc. 2011–26733 Filed 10–14–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–094)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed revisions to an existing Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the National Aeronautics and Space Administration is issuing public notice of its proposal to modify its previously noticed system of records. This notice publishes updates of those systems of records as set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti F. Stockman, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: Minor modifications of the NASA systems of records include: Addition of locations, system and subsystem managers updates; clarification of categories records, their sources, and individuals on whom records are maintained; how the records are maintained and retrieved; and update of system and subsystem managers' titles. Changes for specific NASA systems of records are set forth below:

Equal Opportunity (EO) Records/NASA 10EEOR: Update authorities for maintenance of the system, as well as the system locations, and practices for storing, retrieving, and safeguarding information.

Human Experimental and Research Data Records/NASA 10HERD and Health Information Management System/NASA 10HIMS: Updated to clarify specific NASA standard routine uses.

NASA Aeronautics Scholarship Program/NASA 10NASP: Updated to reflect inclusion of all NASA standard routine uses.

NASA Personnel and Payroll Systems/NASA 10NPPS: Clarify records retrievability and add system and sub-system managers.

Special Personnel Records/NASA 10SPER: Updated to correct title of system manager.

Exchange Records on Individuals/NASA 10XROI: Updated to add locations and corresponding subsystem managers.

Standards of Conduct Counseling Case Files/NASA 10SCCF: Updated to reflect current storage and safeguards, and to clarify system and sub-system managers.

Johnson Space Center Exchange Activities Records/JSC 72XORP: Delete a category of records and corresponding information about their source and retrievability.

Submitted by:

Linda Y. Cureton,

Acting NASA Chief Information Officer.

NASA 10EEOR

SYSTEM NAME:

Equal Opportunity (EO) Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1–9, 11, 18 and 19, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on current and former employees and applicants for employment who have entered the informal counseling process, who have filed formal complaints, and who have requested reasonable accommodations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Equal Employment Opportunity (EEO) informal counseling and formal complaint records; records of requests for reasonable accommodation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 791 *et seq.;* 42 U.S.C. 2473; 42 U.S.C. 2000ff *et seq.;* 42 U.S.C. 12101 *et seq.;* 44 U.S.C. 3101; Exec. Order No. 11478, 3 CFR part 803 (1966–1977); 29 CFR part 1614; 29 CFR part 1635; 5 CFR parts 1200–1202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORES OF USERS AND THE PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The following are routine

uses: (1) Disclosures to the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB) to facilitate their processing of discrimination complaints, including investigations, hearings, and reviews on appeals; (2) responses to other Federal agencies and other organizations having legal and administrative responsibilities related to the NASA Office of Diversity and Equal Opportunity and to individuals in the record; (3) disclosures may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made on behalf of the individual; and (4) disclosures to first aid and safety personnel, when appropriate, if the disability might require emergency treatment; (5) disclosures to Federal Government officials charged with the responsibility of investigating NASA's compliance with The Rehabilitation Act of 1973, as amended, or the Genetic Information Nondiscrimination Act of 2008 (GINA); (6) disclosures to those outside the Agency who have expertise in determining issues of disability discrimination, the appropriateness of any reasonable accommodation, or compliance with GINA. To the greatest extent possible, personally-identifiable information will be deleted; and (7) NASA standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as hard-copy and electronic documents, and as data within Agency-wide web-based tracking systems.

RETRIEVABILITY:

Hard copy records are retrieved by the complainant's name. Electronic records are accessed by name, case number, nature of the complaint, NASA Center from which complaint originated, or stage of the complaint in the process.

SAFEGUARDS:

Hard copy records are locked in file cabinets or in secured rooms with access limited to those whose official duties require access. Electronic data are maintained within locked areas either on disks or in electronic repositories behind approved firewalls with password protected access limited to those whose official duties require access. Electronic messages sent within and outside of the Agency are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and can be destroyed in accordance with NPR 1441.1 NASA Records Retention Schedules, Schedule 3 Item 2.5/E.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Diversity and Equal Opportunity, Location 1. Subsystem Managers: Center Equal Opportunity (EO) Directors/Officers, at locations 1–9, 11, 18 and 19, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem managers listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals themselves; Associate Administrator for Diversity and Equal Opportunity, and all designees, including NASA Center EO Directors; Center complaints managers/coordinators; EEO counselors, specialists, and investigators; EEOC officials and MSPB officials.

NASA 10HERD

SYSTEM NAME:

Human Experimental and Research Data Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1, 2, 5, 6, and 9, as stated in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The information in this system of records is obtained from individuals who have been involved in space flight, aeronautical research flight, and/or participated in NASA tests or experimental or research programs; civil service employees, military, employees of other government agencies, contractor employees, students, human subjects (volunteer or paid), and other volunteers on whom information is collected as part of an experiment or study.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains data obtained in the course of an experiment, test, or research medical data from in-flight records, other information collected in connection with an experiment, test, or research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2475 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Records and information in this system may be disclosed: (1) To other individuals or organizations, including Federal, State, or local agencies, and nonprofit, educational, or private entities, who are participating in NASA programs or are otherwise furthering the understanding or application of biological, physiological, and behavioral phenomena as reflected in the data contained in this system of records; (2) To external biomedical professionals and independent entities to support internal and external reviews for purposes of research quality assurance; (3) To agency contractors or other Federal agencies, as necessary for the purpose of assisting NASA in the efficient administration of its programs; (4) To a Congressional office in response to an inquiry from that office made at the request of the subject of the record; and; and (5) In accordance with standard routine uses 1–7 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSITIONING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored as paper documents, electronic media, micrographic media, photographs, or motion pictures film, and various medical recordings such as electrocardiograph tapes, stripcharts, and x-rays.

RETRIEVABILITY:

Records are retrieved by the individual's name, experiment or test; arbitrary experimental subject number; flight designation; or crewmember designation on a particular space or aeronautical flight.

SAFEGUARDS:

Access is limited to Government personnel requiring access in the discharge of their duties and to appropriate support contractor employees or other individuals on a need-to-know basis. Computerized

records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures, which appear in the NASA regulations, set forth in 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files for varying periods of time depending on the need for use of the records and destroyed when no longer needed in accordance with NASA Records Retention Schedules, Schedule 7 Item 16.

SYSTEM MANAGER(S) AND ADDRESS(ES)

Chief Health and Medical Officer, Location 1.

Subsystem Managers: Director Life Sciences Directorate, Chief Space Medicine Division, and Program Scientist Human Research Program, all at Location 5; Institutional Review Board (IRB) Chairs at appropriate NASA Field Centers at Locations set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained by contacting the cognizant system or subsystem manager listed above. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; and Social Security Number.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from experimental test subjects, physicians and other health care providers, principal investigators and other researchers, and previous experimental test or research records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

NASA 10HIMS

SYSTEM NAME:

Health Information Management System.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Medical Clinics/Units and Environmental Health Offices at Locations 1 through 15, and 19 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on NASA civil service employees and applicants; other Agency civil service and military employees working at NASA; astronauts and their families; International Space Partners astronauts, their families, or other space flight personnel on temporary or extended duty at NASA; onsite contractor personnel who receive job-related examinations under the NASA Occupational Health Program, have work-related mishaps or accidents, or come to clinic for emergency or first-aid treatment; visitors to NASA Centers who come to the clinic for emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains general medical records of medical care, first aid, emergency treatment, examinations (e.g., surveillance, hazardous workplace, certification, flight, special purpose and health maintenance), exposures (e.g., hazardous materials and ionizing radiation), and consultations by non-NASA physicians.

Information resulting from physical examinations, laboratory and other tests, and medical history forms; treatment records; screening examination results; immunization records; administration of medications prescribed by private/personal or NASA flight surgeon physicians; consultation records; and hazardous exposure and other health hazard/abatement data.

Medical records, behavioral health records, and physical examination records of Astronauts and their families.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; Public Law 92–255.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The records and information in this system may be disclosed: (1) To external medical professionals and independent entities to support internal and external reviews for purposes of medical quality assurance; (2) To private or other government health care providers for consultation or referral; (3) To the Office of Personnel Management, Occupational Safety and Health Administration, and other Federal or State agencies as required in accordance with the Federal agency's special program responsibilities; (4) To insurers for reimbursement; (5) To employers of non-NASA personnel in support of the Mission Critical Space Systems Personnel Reliability Program; (6) pursuant to NASA Space Act agreements to international partners for mission support and continuity of care for their employees; (7) To non-NASA personnel performing research, studies, or other activities through arrangements or agreements with NASA and for mutual benefit; (8) To the public of pre-space flight information having mission impact concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists; (9) To public, limited to the crewmember's name and the fact that a medical condition exists, if a flight crewmember is, for medical reasons, unable to perform a scheduled public event during the time period following Space Shuttle landing and concluding with completion of the post space flight return to duty medical evaluation; (10) To the public of medical conditions arising from accidents, consistent with NASA regulations; (11) To agency contractors or other Federal agencies, as necessary for the purpose of assisting NASA in the efficient administration of its programs; (12) To a Congressional office in response to an inquiry from that office made at the request of the subject of the record; and (13) In accordance with standard routine uses 1–7 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSITIONING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in multiple formats including paper, digital, micrographic, photographic, and as medical recordings such as electrocardiograph tapes, x-rays and strip charts.

RETRIEVABILITY:

Records are retrieved from the system by the individual's name, date of birth, and/or Social Security or other assigned Number.

SAFEGUARDS:

Access limited to NASA health care providers and occupational health personnel on a need-to-know basis. Computerized records are protected via limited user accounts with secure user authentication and non-electronic records are maintained in locked rooms or files. Records are protected in

accordance with the requirements and procedures, which appear in the NASA regulations at 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed by series in accordance with NASA Records Retention Schedule 1, Item 126, and NASA Records Retention Schedule 8, Item 57.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Chief Health and Medical Officer at Location 1.

Subsystem Managers: Director Occupational Health at Location 1; Chief, Space Medicine Division at Location 5; Occupational Health Contracting Officers Technical Representatives at Locations 2–4, 6–15, and 19. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained by contacting the cognizant system or subsystem manager listed above. Requests must contain the identifying data concerning the requester, e.g., first, middle and last name; date of birth; and Social Security Number.

RECORD ACCESS PROCEDURES:

Individual written requests for information shall be addressed to the System Manager at Location 1 or the subsystem manager at the appropriate NASA Center.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE PROCEDURES:

The information in this system of records is obtained from individuals, physicians, and previous medical records of individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

NASA 10NASP

SYSTEM NAME:

NASA Aeronautics Scholarship Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The American Society for Engineering Education (ASEE) 1818 N. Street, NW., Suite 600, Washington, DC 20036 and location 1 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-NASA individuals, typically college students, applying for or selected for the Aeronautics Scholarship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include identifying information about scholarship applicants and recipients, including name, social security number, bank account and routing number information, bank address, date of birth, citizenship, mailing address, e-mail address, telephone, academic records, and Graduate Record Examination (GRE) scores, research proposal, and personal references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

NASA Aeronautics Scholarships (for graduate level scholarship), 42 U.S.C. 16741, Public Law 109–155, title IV, 431, Dec. 30, 2005, 119 Stat. 2927; National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473; Federal Records Act of 1950, as amended, 44 U.S.C. 3101; 5 U.S.C. 4101 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Records from this system may be disclosed to authorized contractors who are responsible for administration of the scholarship program, including facilitation of the award selection process, issuance of award payments, maintenance of records, and other functions supporting the operation of the program.

2. Records from this system in the form of scholarship recipients' names and college affiliations will be made available to the public via the Internet to publicize the winners of NASA scholarship awards.

3. NASA standard routine uses set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on a secure server as electronic records. Printed reports from the system are maintained in locked rooms or file cabinets.

RETRIEVABILITY:

By the individual's name, identification number, social security number bank routing number, zip code, institution, state or grade level.

SAFEGUARDS:

Access is limited to ASEE authorized personnel only on a need-to-know basis. Computerized records are protected via limited user accounts with secure user authentication and non-electronic records are maintained in locked rooms or files. Functional user roles are established and access is limited based upon these roles. An IT Security analysis of the system was conducted as required by FIPS 199 and applicable security controls implemented in accordance with Federal Information Processing Standard (FIPS) 853.

RETENTION AND DISPOSAL:

Records are retained and dispositioned in accordance with the guidelines defined in NASA Procedural Requirements (NPR) 1441.1 and NASA Records Retention Schedules, Schedule 1, item 32.

SYSTEM MANAGER AND ADDRESS:

System Manager, Aeronautics Scholarship Program, Aeronautics Research Mission Directorate, Appendix A, Location 1.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the System Manager at the address given above.

RECORD ACCESS PROCEDURES:

Individuals interested in inquiring about their records should notify the System Manager at the address given above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appears in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

The information is obtained directly from the individual program applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NASA 10NPPS

SYSTEM NAME:

NASA Personnel and Payroll Systems.

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Locations 11 and 18, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on present and former NASA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data contained in this system of records includes payroll, employee

leave, insurance, labor and human resource distribution and overtime information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 5 U.S.C. 5501 *et seq.;* 5 U.S.C. 6301 *et seq.;* General Accounting Office's General Policies/Procedures and Communications Manual, Chapter 7; Treasury Fiscal Requirements Manual, Part III; and NASA Financial Management Manual, Sections 9300 and 9600.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following are routine uses: (1) To furnish to a third party a verification of an employee's status upon written request of the employee; (2) to facilitate the verification of employee contributions and insurance data with carriers and collection agents; (3) to report to the Office of Personnel Management (a) withholdings of premiums for life insurance, health benefits, and retirements, and (b) separated employees subject to retirement; (4) to furnish the U.S. Treasury magnetic tape reports and/or electronic files on net pay, net savings allotments and bond transmittal pertaining to each employee; (5) to provide the Internal Revenue Service with details of wages taxable under the Federal Insurance Contributions Act and to furnish a magnetic tape listing on Federal tax withholdings; (6) to furnish various financial institutions itemized listings of employee's pay and savings allotments transmitted to the institutions in accordance with employee requests; (7) to provide various Federal, State, and local taxing authorities itemized listings of withholdings for individual income taxes; (8) to respond to requests for State employment security agencies and the U.S. Department of Labor for employment, wage, and separation data on former employees for the purpose of determining eligibility for unemployment compensation; (9) to report to various Combined Federal Campaign offices total contributions withheld from employee wages; (10) to furnish leave balances and activity to the Office of Personnel Management upon request; (11) to furnish data to labor organizations in accordance with negotiated agreements; (12) to furnish pay data to the Department of State for certain NASA employees located outside the United States; (13) to furnish data to a consumer reporting agency or bureau, private collection contractor or debt collection center in accordance with section 3711 of Title 31 of the United States Code; (14) to forward delinquent debts, and all relevant information related thereto, to the U.S. Department of Treasury, for collection; (15) to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, National Directory of New Hires, part of the Federal Parent Locator Service (FPLS) and the Federal Tax Offset System, DHHS/OCSE No. 09–90–0074, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation act (Pub. L. 104–193); and (16) NASA standard routine uses as set forth in Appendix B.

Disclosure to consumer reporting agencies:

Disclosure pursuant to 5 U.S.C. 552a(b): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or ''private collection contractor'' under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, *et seq.*).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as hard-copy documents and on electronic media.

RETRIEVABILITY:

Records are retrieved from the system by the individual's name, individual's unique personal identification code and/or Social Security Number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and transferred to the National Personnel Records Center (NPRC) within 3 years of creation in accordance with NASA Records Retention Schedules, Schedule 3 Item 47. Records transferred to NPRC will be destroyed when 10 years old by NPRC.

SYSTEM MANAGERS AND ADDRESSES:

Director, Financial Management Division, Office of the Chief Financial Officer, and Assistant Administrator for Human Capital Management, Office of Human Capital Management, Location 1.

Subsystem Managers: Chief Financial Officers and Human Capital Officers, Locations 2 through 9, and 11, Director, Financial Management Division, and Director, Human Resources Division, Location 18. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the same address as identified in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, personnel office(s), and the individual's supervisor.

NASA 10XROI

SYSTEM NAME:

Exchange Records on Individuals.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1–9, 11, 12, 18, and 19, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on present and former employees of, and applicants for employment, with NASA Exchanges, Recreational Associations, and Employees' Clubs at NASA Centers and members of or participants in NASA Exchange activities, clubs and/or recreational associations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Exchange employees' personnel and payroll records, including injury claims, unemployment claims, biographical data, performance evaluations, annual and sick leave records, membership and participation records on Exchange-sponsored activities, clubs and/or recreational associations, and all other employee records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The following are routine uses: (1) To furnish a third party a verification of an employee's status upon written request of the employee; (2) to facilitate the verification of employee contributions for insurance data with carriers and collection agents; (3) to provide various Federal, State, and local taxing authorities itemized listing of withholdings for individual income taxes; (4) to respond to State employment compensation requests for wage and separation data on former employees; (5) to report previous job injuries to worker's compensation organizations; (6) for person to notify in an emergency; (7) to report unemployment records to appropriate State and local authorities; (8) when requested, provide other employers with work records; and (9) NASA standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as hard-copy documents and on electronic media.

RETRIEVABILITY:

Records are retrieved from the system by the individual's name.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures that appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 5 years old in accordance with NASA Records Retention Schedules, Schedule 9 Item 6/D.

SYSTEM MANAGERS AND ADDRESSES:

Contractor Industrial Relations Officer, Location 1.

Subsystem Managers: Exchange Store Operations Manager, Location 1; Exchange Council Chair, Location 2, Exchange Operations Manager, Locations 3–5; Chairperson, Exchange Council, Location 6 and 7; Treasurer, NASA Exchange, Location 8; Exchange Operations Manager, Locations 9, 12, and 19; President, NASA Exchange, Location 11; and NSSC Exchange Counsel, Location 18. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant Subsystem Managers listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be directed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and the individual's supervisor.

NASA 10SCCF

SYSTEM NAME:

Standards of Conduct Counseling Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 1 through 11 inclusive, and Location 18, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on current, former, and prospective NASA employees who have sought advice or have been counseled regarding conflict of interest rules for Government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Depending upon the nature of the problem, information collected may include employment history, financial data, and information concerning family members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 18 U.S.C. 201, 203, 205, 207–209; 5 U.S.C. 7324–7327; 5 U.S.C. Appendix; 14 CFR part 1207; 5 CFR parts 2634–2641; 5 CFR part 6901; and Executive Order 12674, as modified by Executive Order 12731.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following are routine uses: (1) Office of Personnel Management, Office of Government Ethics, and Merit Systems Protection Board for investigation of possible violations of standards of conduct which the agencies directly oversee; and (2) NASA standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form in loose-leaf binders or file folders, and in electronic media, including NASA's Ethics Program Tracking System (EPTS).

RETRIEVABILITY:

Records are retrieved from the system by name of individual.

SAFEGUARDS:

Restricted access to persons authorized by General Counsel or Center Chief Counsel; stored in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 6 years old in accordance with NASA Records Retention Schedules, Schedule 1 Item 133/B.

SYSTEM MANAGERS AND ADDRESSES:

System Manager: Associate General Counsel for General Law, Code GG, Location 1.

Sub-system Managers: Chief Counsel, Locations 2 through 11, and Counsel to the Executive Director, Location 18, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the System Manager and must include employee's full name and NASA Center where employed.

CONTESTING RECORD PROCEDURES:

The NASA regulations and procedures for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information collected directly from individual and from his/her official employment record.

NASA 10SPER

SYSTEM NAME:

Special Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive, and locations 11 and 18 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on candidates for and recipients of awards or NASA training; civilian and active duty military detailees to NASA; participants in enrollee programs; Faculty, Science, National Research Council and other Fellows, associates and guest workers including those at NASA Centers but not on NASA rolls; NASA contract and grant awardees and their associates having access to NASA premises and records; individuals with interest in NASA matters including Advisory Committee Members; NASA employees and family members, prospective employees and former employees; former and current participants in existing and future educational programs, including the Summer High School Apprenticeship Research Program (SHARP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Program Files including: (1) Alien Scientist files; (2) Award files; (3) Counseling files, Life and Health Insurance, Retirement, Upward Mobility, and Work Injury Counseling files; (4) Military and Civilian Detailee files; (5) Personnel Development files such as nominations for and records of training or education, Upward Mobility Program files, Intern Program files, Apprentice files, and Enrollee Program files; (6) Special Employment files such as Federal Junior Fellowship Program files, Stay-in-School Program files, Summer Employment files, Worker-Trainee Opportunity Program files, NASA Executive Position files, Expert and Consultant files, and Cooperative Education Program files; (7) Welfare to Work files; and (8) Supervisory Appraisals under Competitive Placement Plan.

Correspondence and related information including: (1) Claims correspondence and records about insurance such as life, health, and travel; (2) Congressional and other Special Interest correspondence, including employment inquiries; (3) Correspondence and records concerning travel related to permanent change of address; (4) Debt complaint correspondence; (5) Employment interview records; (6) Information related to outside employment and activities of NASA employees; (7) Placement follow-ups; (8) Preemployment inquiries and reference checks; (9) Preliminary records related to possible adverse actions; (10) Records related to reductions in force; (11) Records under administrative as well as negotiated grievance procedures; (12) Separation information including exit interview records, death certificates and other information concerning death, retirement records, and other information pertaining to separated employees; (13) Special planning analysis and administrative information; (14) Performance appraisal records; (15) Working papers for prospective or pending retirements.

Special Records and Rosters including: (1) Locator files, (2) Ranking lists of employees; (3) Repromotion candidate lists; (4) Retired military employee records; (5) Retiree records; (6) Follow-up records for educational programs, such as the SHARP and other existing or future programs.

Agencywide and Center automated personnel information: Rosters, applications, recommendations, assignment information and evaluations of Faculty, Science, National Research Council and other Fellows, associates and guest workers including those at NASA Centers but not on NASA rolls; also, information about NASA contract and grant awardees and their associates having access to NASA premises and records.

Information about members of advisory committees and similar organizations: All NASA-maintained information of the same types as, but not limited to, that information required in systems of records for which the Office of Personnel Management and other Federal personnel-related agencies publish Government wide Privacy Act Notices in the Federal Register.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following are routine uses: (1) Disclosures to organizations or individuals having contract, legal, administrative or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, non-profit organizations, and contractors and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) disclosures to Federal agencies developing statistical or data presentations having need of information about individuals in the records; (3) responses to other Federal agencies and other organizations having legal or administrative responsibilities related to programs and individuals in the records; (4) disclosure to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of that individual; and (5) NASA standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as hard-copy documents and on electronic media.

RETRIEVABILITY:

Records are retrieved from the system by any one or a combination of name, birth date, Social Security Number, or identification number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures that appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and not all record types are authorized for disposal at this time, but records such as Pay records are transferred to the National Personnel Records Center (NPRC) within 3 years of creation in accordance with NASA Records Retention Schedules, Schedule 3 Item 19. Records transferred to NPRC will be destroyed when 10 years old by NPRC.

SYSTEM MANAGERS AND ADDRESSES:

Associate Administrator for Human Capital Management, Location 1.

Subsystem Managers: Director, Personnel Division, Office of Inspector General, and Chief, Elementary and Secondary Programs Branch, Educational Division, Location 1; Director of Personnel, Locations 1, 3, 4, 6, and 8; Director of Human Resources, Location 2, 5, and 9; Director, Office of Human Resources, Location 7; Human Resources Officer, Location 11; Director, Human Resources Services Division, Location 18. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Apply to the System or Subsystem Manager at the appropriate location above. In addition to personal identification (name, Social Security Number), indicate the specific type of record, the appropriate date or period of

time, and the specific kind of individual applying (e.g., employee, former employee, contractor employee).

RECORD ACCESS PROCEDURE:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by individual concerned are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and Personnel Office(s).

JSC 72XOPR

SYSTEM NAME:

Johnson Space Center Exchange Activities Records.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Location 5 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on employees and past employees of Johnson Space Center (JSC) Exchange Operations, and JSC employees or JSC contractor employees participating in sports or special activities sponsored by the Exchange.

CATEGORIES OF RECORDS IN THE SYSTEM:

For present and past employees of the JSC Exchange Operations, the system includes a variety of records relating to personnel actions and determinations made about an individual while employed by the NASA Exchange-JSC. These records contain information about an individual relating to birth date; Social Security Number; home address and telephone number; marital status; references; veteran preference, tenure, handicap; position description, past and present salaries, payroll deductions, leave; letters of commendation and reprimand; adverse actions, charges and decisions on charges; notice of reduction in force; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer and separation; minority group; records relating to life insurance, health and retirement benefits; designation of beneficiary; training; performance ratings; physical examinations; criminal matters; data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

For participants in social or sports activities sponsored by the Exchange, information includes employees' or contractors' employee identification number, organization, location, telephone number, and other information directly related to status or interest in participation in such activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; NASA Policy Directive 9050.6; Treasury Fiscal Requirement Manual, Part III.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following are routine uses for information maintained on JSC Exchange Operations employees only: (1) Provide information in accordance with legal or policy directives and regulations to the Internal Revenue Service, Department of Labor, Department of Commerce, Texas State Government Agencies, labor unions; (2) provide information to insurance carriers with regard to worker's compensation, health and accident, and retirement insurance coverages; (3) provide employment or credit information to other parties as requested by a current or former employee of the JSC Exchange Operations; and (4) NASA standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as hard-copy documents and on electronic media.

RETRIEVABILITY:

For JSC Exchange employees, records are retrieved from the system by name and filed as current or past employee.

SAFEGUARDS:

Payroll records are located in locked metal file cabinets with access limited to those whose official duties require access. Other records are located in file cabinets available only in rooms where the access is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Personnel records of JSC Exchange operations employees are retained indefinitely in Agency space to satisfy payroll, reemployment, unemployment compensation, tax, and employee retirement purposes. For successful applicants under the JSC Exchange Scholarship Program, records are maintained until completion of awarded scholarship and are then destroyed. Records pertaining to unsuccessful applicants are destroyed. For participants in social or sports activities, records are maintained for stated participation period and are then destroyed. These dispositions are in accordance with NASA Records Retention Schedules, Schedule 9 Item 6/E.

SYSTEM MANAGERS AND ADDRESSES:

Manager, Exchange Operations, NASA Exchange-JSC, Location 5, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

For employees of the JSC Exchange Operations, information is obtained from the individual employee, the employee references, insurance carriers, JSC Health Services Division, JSC Security, employment agencies, Texas Employment Commission, credit bureaus, and creditors. For JSC employees and JSC contractor employees participating in social or sports activities sponsored by the Exchange, information is obtained from the individual participant.

[FR Doc. 2011–26735 Filed 10–14–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–095)]

NASA Advisory Committee; Renewal of NASA's International Space Station Advisory Committee Charter

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal and amendment of the Charter of the International Space Station Advisory Committee.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National

Aeronautics and Space Administration has determined that a renewal of the International Space Station Advisory Committee is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed Charter is for a one-year period ending September 30, 2012. It is identical to the original Charter in all respects, except it provides for a deputy chair in addition to the chair.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of International and Interagency Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

October 11, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–26802 Filed 10–14–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (66).

Date/Time: November 2, 2011 2 p.m.–4 p.m.; November 3, 2011 8 a.m.–6 p.m.; November 4, 2011 8 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, November 5, Room 1005, November 6 and 7, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda:

Briefing to new members about NSF and Directorate (11/2).

Update on current status of Directorate.

Reports from liaisons with other Advisory Committees.

Meeting of MPSAC with Divisions within MPS Directorate.

Discussion of MPS Long-term Planning Areas.

Summary Minutes: May be obtained from the contact person listed above.

Dated: October 11, 2011.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2011–26655 Filed 10–14–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on November 2, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 2, 2011—8:30 a.m. Until 12:30 p.m.

The Subcommittee will review the DAC inspection procedures (DI&C, piping and human factors) and discuss the planning of the implementation of these procedures. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Christina Antonescu (Telephone 301–415–6792 or *e-mail: Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11545 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: October 7, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–26760 Filed 10–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 2, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 2, 2011—12 p.m. Until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. The Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179

or *E-mail: Ilka.Berrios@nrc.gov*). Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: October 11, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–26779 Filed 10–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0208]

Implementation of the Alternative Dispute Resolution Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to conduct a public meeting on November 8, 2011, in Rockville, Maryland, to solicit feedback from its stakeholders on its Alternative Dispute Resolution (ADR) Program in the NRC's Office of Enforcement (OE). OE oversees, manages, participates, and develops guidance for this program. The meeting will be composed of panel discussions addressing implementation of the ADR Program and whether changes could be made to the program to make it more effective, transparent, and efficient. Panel discussions will be followed by opportunities for other meeting participants to ask questions and/or provide comments.

DATES: Submit comments by January 17, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0208 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments on the issues and questions presented in this document and discussed at the meeting by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0208. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

FOR FURTHER INFORMATION CONTACT: Shahram Ghasemian, *telephone:* 301–415–3591 or by e-mail to *Shahram.Ghasemian@nrc.gov;* or Maria Schwartz, *telephone:* 301–415–1888 or by e-mail to *Maria.Schwartz@nrc.gov.* Both of these individuals can also be contacted by mail at the U.S. Nuclear Regulatory Commission, Office of Enforcement, Concerns Resolution Branch, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On September 6, 2011 (76 FR 55136), the NRC announced its intention to hold a public meeting addressing implementation of its ADR Program in the **Federal Register** (ADAMS Accession No. ML11237A115), and solicited nominations of individuals to participate on a panel to discuss various aspects of the program's effectiveness, transparency, and efficiency, as well as several specific questions that the NRC is including in this **Federal Register** notice (FRN) for public comment.

The NRC's ADR Program is comprised of two entirely different sub-programs; the first is pre-investigation (commonly referred to as ''Early ADR'') and the second is post-investigation. The early ADR Program provides an individual and his or her employer (or former employer) the opportunity to resolve the individual's allegation of discrimination through mediation rather than to fully litigate the discrimination allegation or have the NRC initiate an investigation into the allegation of discrimination. Mediation is an informal and voluntary process between an individual and his or her employer (or former employer) in which a trained mediator works with the parties to help them settle their dispute. Early resolution of discrimination allegations tends to preserve relationships and generally promotes a safety conscious work environment by facilitating timely and amicable resolution of discrimination concerns without resorting to prolonged litigation and unnecessary expenses.

The second sub-program (commonly referred to as ''Post-Investigation ADR'') refers to the use of mediation after the completion of an investigation by the NRC's Office of Investigations (OI) and the staff's conclusion that the pursuit of an enforcement action appears warranted. It is offered at three stages after the completion of an investigation by OI: (1) Before an initial enforcement action; (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation; and (3) when a civil penalty is imposed but before a hearing request. Post-investigation ADR may produce more timely and effective outcomes for the NRC and an entity (*e.g.,* an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action.

Participation in either early or post-investigation ADR is entirely voluntary. The parties involved may withdraw from the mediation process at any time. If mediation is unsuccessful in the case of early ADR, the OI may initiate an investigation into the allegation of discrimination; while, in the case of post-investigation ADR, the NRC may proceed with an enforcement action.

II. Purpose of the Public Meeting

The purpose of this meeting is to provide a forum in which stakeholders, including the NRC, can discuss the NRC's current ADR Program (early ADR and post-investigation ADR). The ADR Program has become an important aspect of the NRC's enforcement program. Because ADR is regularly used in the NRC's enforcement program, the NRC believes it should solicit stakeholder input to ensure that the program provides timely and economical resolution of issues while achieving more effective outcomes and improved relations. Questions about participation in the public meeting

should be directed to one of the contacts at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Topics for Discussion

This meeting will allow stakeholders to provide feedback regarding their perceptions of the ADR Program's effectiveness, transparency, and timeliness. To ensure that this process is open, effective, and collaborative, the format of the meeting will consist of panel discussions among stakeholders to include: a representative from the NRC, representatives from NRC-regulated nuclear industries, public interest groups, and members of the public. The panel discussions will be followed by interactive discussions with other meeting attendees.

Specific questions that the NRC will consider during the meeting, and on which the NRC is soliciting public comments are:

Questions Related to Pre-investigation ADR (Includes ''Early ADR'' and ''Licensee-Sponsored ADR'')

1. Do you think the NRC's Pre-investigation Program supports the NRC's mission to protect the public health and safety and the environment?

2. Pre-investigation ADR is limited to the resolution of allegations of discrimination and expressly excludes the resolution of technical issues prior to the initiation of an NRC investigation. Are there other types of issues that may be resolved through the program?

3. ''Abuse of the program'' is the exception to entry into the program. ''Abuse of the program'' is currently not defined. Should this term be defined? If so, how should it be defined? Provide some examples of an ''abuse of the program'' by an alleger or a company?

4. In addition to ''abuse of the program,'' should there be other restrictions to entry into the program?

5. Pre-investigation ADR is offered in lieu of an OI investigation. If the parties reach a settlement agreement that does not include terms which prohibit or discourage the alleger from engaging in a protected activity, the NRC does not initiate an investigation and closes the allegation. Should this aspect of the program be changed? Why or why not?

6. Statistical trending data regarding the usage of the program and other information regarding the process is currently published on the NRC's Enforcement ADR Web page at *http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html*.

a. Are there other means to enhance the transparency of the program without infringing on the confidentiality of the ADR process or the allegation program?

b. What are some factors to be considered when measuring the transparency of the program?

7. Do you view the pre-investigation ADR as timely?

8. Should stricter timeliness requirements be imposed on the parties in early ADR?

9. What factors should be considered when measuring the effectiveness of the early ADR program?

10. Is the use of a third party administrator beneficial to the program?

11. Are mediators perceived as effective and unbiased in supporting the parties' resolution of their differences?

12. Are the mediators familiar with the NRC regulatory environment?

13. What are some areas that present opportunities for improvement to the early ADR program?

14. What are some areas of the program that you believe are effective?

Issues Related to Post-investigation ADR

1. Does the program support the NRC's mission and achieve its enforcement policy goals? In that regard, do post-investigation ADR outcomes generally convey a strong regulatory message?

2. Post-investigation ADR is limited to the resolution of wrongdoing cases and related technical issues after the conclusion of an NRC investigation. Should the scope of post-investigation ADR be expanded (e.g. non-wrongdoing cases involving the imposition of a civil penalty)?

3. Post-investigation ADR outcomes, statistical trending data regarding the usage of the program and other information regarding the process and the program generally, are currently published on the NRC's Enforcement ADR Web page (*http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html*). Moreover, a press release is typically issued following the issuance of a confirmatory order publicizing the mediation and its outcome. Are there other means to enhance the transparency of the program (including outcomes, policies and procedures) without infringing on the confidentiality considerations of the ADR process?

4. What are some factors to be considered when measuring the transparency of the program?

5. Are there other means to enhance the communication of ADR outcomes, policies and procedures?

6. Do you view the post-investigation ADR process as timely?

7. Could the process be modified to make it more timely? How?

8. What factors should be considered when measuring the effectiveness of the post-investigation ADR Program?

9. Under what circumstances should the NRC consider not entering into post-investigation ADR?

10. Is the use of a third party administrator beneficial to the program?

11. Are the mediators perceived as effective and unbiased in supporting the parties' resolution of their differences?

12. Are the mediators familiar with the NRC regulatory environment?

13. What are some areas of this program that present opportunities for improvement?

14. What are some areas of this program that you believe are effective?

IV. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting

materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0208.

V. Draft Agenda

The meeting is currently planned to be held on November 8, 2011, in Room T–2B3 in Two White Flint North at the NRC Headquarters building located at 11556 Rockville Pike, Rockville, Maryland 20852, beginning at 8:30 a.m. and concluding at 5 p.m. (Eastern Standard Time). The agenda will include introductory remarks briefly describing the ADR Program and the use of ADR in the NRC's enforcement program. This will be followed by panel sessions that address the topics provided in Section III of the **SUPPLEMENTARY INFORMATION** section of this document. A meeting notice with this information and a final agenda will be available on the NRC Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/conferences.html* at least 10 days prior to the meeting.

Those unable to travel and attend in person may participate by Webinar. The meeting notices on the NRC Public Meeting Schedule Web site will provide information on how those unable to participate in person may do so via Webinar.

Prior to the meeting, attendees are requested to register with one of the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section of this document so that sufficient accommodations can be made for their participation. Please let the contact know if special services, such as services for the hearing impaired, translation services, etc., are necessary. Please check the NRC Web site (*http://www.nrc.gov/public-involve/conferences.html* and/or *http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html*) for any updates to the meeting schedule and/or additional information about this meeting.

Dated at Rockville, Maryland, this 7th day of October 2011.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2011–26752 Filed 10–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the U.S. Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another day of the same meeting. Persons planning to attend the meeting may contact the Designated Federal Official (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting, but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO 5 days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO; if possible, the request should be made 5 days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) ACRS meeting schedules, agendas, transcripts, and letter reports are available through the PDR at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS.* Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown,

ACRS Audio Visual Specialist, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least 5 working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 11, 2011.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2011–26780 Filed 10–14–11; 8:45 am]

BILLING CODE P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Peace Corps invites the general public to comment on this request revision of a currently approved collection, Peace Corps 50th Anniversary Archive Project (OMB Control Number: 0420–0542). The title of the information collection will change from Peace Corps 50th Anniversary Archives to Peace Corps Digital Library. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Submit comments on or before December 16, 2011.

ADDRESSES: Comments should be addressed to Denora Miller, Freedom of Information Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or e-mail at *pcfr@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The 50th Anniversary Archive Project collects stories and photographs from Returned Peace Corps Volunteers along with basic contact information (name, phone number, e-mail address) and information about their Peace Corps service, such as dates of service, geographic location, and sector of service.

Method: The information is collected from an online form.

Old Title: Peace Corps 50th Anniversary Archive Project.

New Title: Peace Corps Digital Library.

OMB Control Number: 0420-pending.

Type of Information Collection: Revision of a currently approved collection.

Affected Public: Returned Peace Corps Volunteer and general public.

Respondents' Obligation To Reply: Voluntary.

Burden to the Public:

(a) Estimated number of respondents: 1,000.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 15 minutes.

(d) Estimated total reporting burden: 250 hours.

(e) Estimated annual cost to respondents: $0.00.

General Description of Collection: This information is used to add assets to the digital library on the Peace Corps Web site; provide stories and photos for use in exhibits, news articles and events about Peace Corps; assist in documenting the history of the Peace Corps as experienced by its Volunteers through the years.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps Response, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on October 6, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–26723 Filed 10–14–11; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–1; Order No. 897]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Basalt, Idaho 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):* October 19, 2011; *deadline for notices to intervene:* November 1, 2011, 4:30 p.m., eastern time. *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 October 4, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Basalt post office in Basalt, Idaho. The petitions for review were filed by Franklyn and Nancy Freeman, and Paul and Joy Freeman (Petitioners) and are postmarked September 28, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–1 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 November 8, 2011.

Issue 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 October 19, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 19, 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 November 1, 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 October 19, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 19, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 4, 2011	Filing of Appeal.
October 19, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 19, 2011	Deadline for the Postal Service to file any responsive pleading.
November 1, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 8, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 28, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 13, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 20, 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).
January 26, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26700 Filed 10–14–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–4; Order No. 900]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Balm, Florida 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):* October 20, 2011; *deadline for notices to intervene:* November 1, 2011, 4:30 p.m., eastern time. *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 October 5, 2011, the Commission received a petition for review of the Postal Service's determination to close the Balm post office in Balm, Florida. The petition for review was filed by George and Marilyn Fears (Petitioners) and is postmarked September 29, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–4 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 November 9, 2011.

Issue 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 October 20, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 20, 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 November 1, 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 October 20, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 20, 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 5, 2011	Filing of Appeal.
October 20, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 20, 2011	Deadline for the Postal Service to file any responsive pleading.
November 1, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).

PROCEDURAL SCHEDULE—Continued

November 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 14, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 21, 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).
January 27, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26702 Filed 10–14–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–3; Order No. 899]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Scott, Mississippi 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):* October 20, 2011; *deadline for notices to intervene:* November 1, 2011, 4:30 p.m., eastern time. *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 October 5, 2011, the Commission received a petition for review of the Postal Service's determination to close the Scott post office in Scott, Mississippi. The petition for review was filed by the Scott Action Committee of Concerned Citizens (Petitioner) and is postmarked September 27, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–3 to consider Petitioner's appeal. If Petitioner would like to further explain its 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 November 9, 2011.

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) there are factual errors contained in the Final Determination.

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 October 20, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 20, 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 November 1, 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 October 20, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 20, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 5, 2011	Filing of Appeal.
October 20, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 20, 2011	Deadline for the Postal Service to file any responsive pleading.
November 1, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 14, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 21, 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).
January 25, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26701 Filed 10–14–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–2; Order No. 898]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Bloomington, Idaho 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):* October 19, 2011; *deadline for notices to intervene:* November 1, 2011, 4:30 p.m., eastern time. *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 October 4, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Bloomington post office in Bloomington, Idaho. The petitions for review were filed by Kelly and Julie Payne, and Dale Thornock (Petitioners) the earliest of which was postmarked September 26, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–2 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 November 8, 2011.

Issue 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 October 19, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 19, 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 November 1, 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 October 19, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 19, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 4, 2011	Filing of Appeal.
October 19, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 19, 2011	Deadline for the Postal Service to file any responsive pleading.
November 1, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 8, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 28, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 13, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 20, 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).
January 24, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26703 Filed 10–14–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–6; Order No. 902]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Saint Lucas, 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):* October 20, 2011; *Deadline for notices to intervene:* November 1, 2011, 4:30 p.m., eastern time. *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 October 5, 2011, the Commission received a petition for review of the Postal Service's determination to close the Saint Lucas post office in Saint Lucas, Iowa. The petition for review was filed by Dennis and Janet Kuennen (Petitioners) and is postmarked September 22, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–6 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 November 9, 2011.

Issue Apparently Raised

Petitioner contends 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 October 20, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 20, 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 November 1, 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 October 20, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 20, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Derrick D. Dennis 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 5, 2011	Filing of Appeal.
October 20, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 20, 2011	Deadline for the Postal Service to file any responsive pleading.
November 1, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 14, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 21, 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).
January 20, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26705 Filed 10–14–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–7; Order No. 904]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Campaign, Tennessee 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):* October 21, 2011; *deadline for notices to intervene:* November 7, 2011, 4:30 p.m., eastern time. *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 October 6, 2011, the Commission received a petition for review of the Postal Service's determination to close the Campaign post office in Campaign, Tennessee. The petition for review was filed by Rick D. Lyles (Petitioner) and is postmarked September 23, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–7 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 November 10, 2011.

Issue apparently raised. Petitioner contends 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 October 21, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 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 November 7, 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 October 21, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 21, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Natalie Rea Ward 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 6, 2011	Filing of Appeal.
October 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 21, 2011	Deadline for the Postal Service to file any responsive pleading.
November 7, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 10, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 30, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 15, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 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).
January 23, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26706 Filed 10–14–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–5; Order No. 901]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Conception Junction, Missouri 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):* October 20, 2011; *deadline for notices to intervene:* November 1, 2011, 4:30 p.m., eastern time. *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 October 5, 2011, the Commission received a petition for review of the Postal Service's determination to close the Conception Junction post office in Conception Junction, Missouri. The petition for review was filed by Richard L. Holtman (Petitioner) and is postmarked September 29, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–5 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 November 9, 2011.

Issue apparently raised. Petitioner contends 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 October 20, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 20, 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 November 1, 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 October 20, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 20, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James F. Callow 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.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 5, 2011	Filing of Appeal.
October 20, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 20, 2011	Deadline for the Postal Service to file any responsive pleading.
November 1, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 14, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 21, 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).
January 27, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26704 Filed 10–14–11; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 26, 2011, 9 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Executive Committee Reports.

Portion closed to the public:

(A) Vacant General Counsel Position.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: October 12, 2011.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2011–26868 Filed 10–13–11; 4:15 pm]

BILLING CODE 7905–01–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 a Closed Meeting on Thursday, October 20, 2011 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 20, 2011 will be: Settlement of injunctive actions;institution and settlement of administrative proceedings; andother matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: October 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26921 Filed 10–13–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65530; File No. SR–ISE–2011–66]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

October 11, 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 September 30, 2011, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend an incentive plan for market makers in a number of foreign currency options (''FX Options'') traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend an incentive plan for market makers in options on the New Zealand dollar (''NZD''), the Mexican peso (''PZO''), the Swedish krona (''SKA''), the Brazilian real (''BRB''), the Australian dollar (''AUX''), the British pound (''BPX''), the Canadian dollar (''CDD''), the euro (''EUI''), the Japanese yen (''YUK'') and the Swiss franc (''SFC'').[3] On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,[4] and on January 19, 2010, added BRB to the incentive plan,[5] and on March 1, 2011, added AUX, BPX, CDD, EUI, YUK and SFC.[6] The Exchange has since extended the date by which market makers may join the incentive plan [7] and now proposes to do so again.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter [8] FXPMM [9] and all Early Adopter FXCMMs [10] that make a market in NZD, PZO SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers are currently required to enter into the incentive plan no later than September 30, 2011. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to December 30, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] 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 the proposed rule change is equitable as it will permit all market makers to explore the opportunity to join the incentive plan for an additional three months. The Exchange believes the proposed rule change is reasonable because the extension of the incentive plan for three months will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission previously approved the trading of options on NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] *See* Securities Exchange Act Release No. 60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR–ISE–2009–59).

[5] *See* Securities Exchange Act Release No. 61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR–ISE–2010–07).

[6] *See* Securities Exchange Act Release No. 64012 (March 2, 2011), 76 FR 12778 (March 8, 2011) (SR–ISE–2011–11).

[7] *See* Securities Exchange Act Release Nos. 60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR–ISE–2009–80), 61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR–ISE–2009–115), 61851 (April 6, 2010), 75 FR 18565 (April 12, 2010) (SR–ISE–2010–27), 62503 (July 15, 2010), 75 FR 42812 (July 22, 2010) (SR–ISE–2010–71), 36045 (October 5, 2010), 75 FR 62900 (October 13, 2010) (SR–ISE–2010–100), 63639 (January 4, 2011), 76 FR 1488 (January 10, 2011) (SR–ISE–2010–121), 64202 (April 6, 2011), 76 FR 20431 (April 12, 2011) (SR–ISE–2011–16) and 64861 (July 12, 2011), 76 FR 42145 (July 18, 2011) (SR–ISE–2011–38).

[8] Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

[9] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[10] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

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

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 such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–66. 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–ISE–2011–66 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26677 Filed 10–14–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65526; File No. SR–NASDAQ–2011–130]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Re-Institute Fees for NASDAQ Basic and To Offer an Optional Nasdaq Basic Non-Professional Enterprise License Fee

October 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19–b4 thereunder,[2] notice is hereby given that on September 30, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to re-institute the fees for ''Nasdaq Basic,'' which is a real time data feed combining both NASDAQ's Best Bid and Offer (''QBBO'') and the ''NASDAQ Last Sale,''[3] as well as to offer an optional NASDAQ Basic Non-Professional Enterprise License Fee for broker-dealer distribution of NASDAQ Basic data to non-professional users with which the broker-dealer has a brokerage relationship (the ''Basic Non-Professional Enterprise License'' or ''Enterprise License'').

The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

7047. Nasdaq Basic

(a) No change.

(b) User Fees.

(1) Except as provided in (b)(2) and (b)(3), for the NASDAQ Basic product there shall be a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for Alternext-listed stocks; or

(2) For each non-professional subscriber, as defined in Rule 7011(b), there shall be a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for Alternext-listed stocks; or

(3) There shall be a per query fee for NASDAQ Basic of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for Alternext-listed stocks.

(4) An alternative to (b)(2) a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to non-professional subscribers. The enterprise license entitles a Distributor to provide Nasdaq Basic to an unlimited number of non-professional subscribers with whom the firm has a brokerage relationship. The enterprise license is in addition to the Distributor Fee listed in (c)(1).

(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements

[3] NASDAQ has also filed a companion release to establish Nasdaq Basic. *See* SR–NASDAQ–2011–129. Additionally, NASDAQ is aware that the NASDAQ Basic pilot program has lapsed and NASDAQ intends to submit a separate filing to address the lapsed period shortly.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to re-institute all of the user and distributor fees for Nasdaq Basic,[4] as well as to offer an optional Enterprise License fee for broker-dealer distribution of Nasdaq Basic data to non-professional users with which the broker-dealer has a brokerage relationship. NASDAQ has also filed a companion release to establish Nasdaq Basic.[5]

Consistent with the sale of consolidated data and of NASDAQ proprietary data, NASDAQ charges a fee for professional use of Nasdaq Basic, and a reduced fee for non-professional use. Specifically, for each professional user of the Nasdaq Basic product, there is a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for NYSE Amex-listed stocks. For each non-professional subscriber, there is a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for NYSE Amex-listed stocks. ''Non-professional'' will have the same meaning in this proposed rule as it currently has in Rule 7011(b). For users that do not require a monthly subscription, there is a per query option available for Nasdaq Basic, with a fee of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for NYSE Amex-listed stocks. Vendors that report per query usage to NASDAQ are permitted to convert to monthly subscription fees when the cost of individual users' queries exceeds the cost of the monthly subscription.

As with the distribution of certain other NASDAQ proprietary products, all distributors of Nasdaq Basic are assessed a monthly Distributor Fee in addition to any applicable usage fees. Each Distributor of Nasdaq Basic shall pay a monthly fee of $1,500 for either internal or external distribution. Also, each Distributor may pay $1,500 monthly to distribute data derived from Nasdaq Basic to an unlimited number of non-professional subscribers. The term ''Distributor'' has the same meaning in this proposed rule as currently set forth in NASDAQ Rule 7019.

Basic Non-Professional Enterprise License Current Proposal. NASDAQ will begin offering a voluntary Enterprise License Fee for the Nasdaq Basic product (NASDAQ Rule 7047) for non-professional usage, which will cost $100,000 per month. The Basic Non-Professional Enterprise License is available only to broker-dealers registered under the Act and would be in lieu of non-professional usage fees only. Additionally, it is an option only for those customers with whom the broker-dealer maintains a brokerage relationship. The Enterprise License also includes an allowance to distribute data, under a certain threshold, to external professional subscribers with which the firm has a brokerage relationship.[6]

The Basic Non-Professional Enterprise License Fee would be in addition to the distributor fees in NASDAQ Rule 7047(c). Broker-dealers that choose to pay the Basic Non-Professional Enterprise License Fee of $100,000 per month would not pay for any of the non-professional user fees in NASDAQ Rule 7047(b). The broker-dealer would continue to pay user fees for those users that are not eligible under the Enterprise License. The Basic Non-Professional Enterprise License Fee does not involve the creation of a new data feed, but rather is a new pricing option for an existing data feed. The Basic Non-Professional Enterprise License Fee allows firms to use the Nasdaq Basic data for display purposes only, but does not permit its redistribution in any other manner. This is not a new service or a new product. NASDAQ is merely creating a new pricing option specific for the broker-dealer non-professional user community.

Background. NASDAQ disseminates market data feeds in two capacities. First, NASDAQ disseminates consolidated or ''core'' data in its capacity as Securities Information Processor for the national market system plan governing securities listed on NASDAQ as a national securities exchange.[7] Second, NASDAQ separately disseminates proprietary or ''non-core'' data in its capacity as a registered national securities exchange. Non-core data is any data generated by the NASDAQ Market Center Execution System that is voluntarily disseminated by NASDAQ separate and apart from the consolidated data.[8] NASDAQ has numerous proprietary data products, such as NASDAQ TotalView, NASDAQ Last Sale, and Nasdaq Basic.

NASDAQ continues to seek broader distribution of non-core data and to reduce the cost of providing non-core data to larger numbers of investors. In the past, NASDAQ has accomplished this goal in part by offering similar capped fees, flat fees or enterprise licenses for professional and non-professional usage of TotalView which contains the full depth of book data for the NASDAQ Market Center Execution System. NASDAQ has also implemented these capped/flat fees with other products, such as NASDAQ Last Sale. NASDAQ believes that the adoption of flat fee structures or enterprise licenses has led to greater distribution of market data, particularly among non-professional users.

Based on input from market participants and market data distributors, NASDAQ believes that this increase in distribution is attributable in part to the relief it provides distributors from the NASDAQ requirement that distributors count and report each non-professional user of NASDAQ proprietary data. In addition to increased administrative flexibility, enterprise licenses also encourage broader distribution by firms that are currently over the fee cap as well as those that are approaching the cap and wish to take advantage of the benefits of the program. Further, NASDAQ believes that capping fees in this manner creates goodwill with broker-dealers and increases transparency for non-professional users.

Accordingly, NASDAQ is establishing the Basic Non-Professional Enterprise License Fee for Nasdaq Basic under NASDAQ Rule 7047(b)(4), an optional non-professional enterprise license for distributors of Nasdaq Basic. This Enterprise License Fee includes non-professional usage fees, but does not include distributor fees.[9] The Enterprise License is available only to broker-dealers registered under the Act, and would cover all non-professional usage

[4] *See* Securities Exchange Act Release No. 59582 (March 16, 2009) 74 FR 12423 (March 24, 2009) (SR–NASDAQ–2008–102).

[5] *Supra* note 3.

[6] NASDAQ relies on distributor self-reporting of usage for products associated with a data feed rather than on individual contact with each end-user customer. NASDAQ permits distributors to designate an entire user population as ''non-professional'' provided that the number of professional subscribers within that user population does not exceed ten percent (10%) of the total population.

[7] *See* Securities Exchange Act Release No. 59039 (Dec. 2, 2008) at p. 41.

[8] *Id.*

[9] Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

fees to customers with whom the firm has a brokerage relationship with an allowance to distribute data to external professional subscribers with which the firm has a brokerage relationship.[10] Non-broker-dealer vendors and application service providers would not be eligible for the Enterprise License; such firms typically pass through the cost of market data user fees to their customers. The proposed Basic Non-Professional Enterprise License still requires firms to continue to report usage in accordance to the current reporting policy. This information provides NASDAQ with accurate information for monitoring and auditing purposes.

The proposed Basic Non-Professional Enterprise License Fee is completely optional and does not replace existing enterprise license fee alternatives set forth in Rule 7047. Additionally, the proposal does not impact individual usage fees for any product or in any way raise the costs of any user of any NASDAQ data product. To the contrary, the Enterprise License provides broker-dealers with an additional approach to providing more NASDAQ data at a lower cost.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[13]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. Nasdaq Basic is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

NASDAQ believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of Nasdaq Basic. The dissemination is designed to increase not only transparency for non-professional users, but also to reduce burdensome administrative costs in addition to actual per user costs. NASDAQ notes also that Nasdaq Basic data is already distributed and that this filing proposes to distribute no additional data elements. Nasdaq Basic is distributed and purchased on a voluntary basis, in that neither NASDAQ nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was

[10] *Supra* note 6.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers'

production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Yahoo and Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson-Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of depth data attracts order flow. For example, NASDAQ submits that in and of itself, NASDAQ's decision voluntarily to cap fees on existing products, as is the effect of a flat fee or an enterprise license, is evidence of market forces at work.

The court in *NetCoalition* did cite favorably an economic study by Ordover and Bamberger which concluded that ''[a]lthough an exchange may price its trade execution fees higher and its market data fees lower (or vice versa), because of ''platform'' competition the exchange nonetheless receives the same return from the two ''joint products'' in the aggregate.'' [14] Ordover and Bamberger also provided additional comments expanding upon the impact of platform competition.[15] Among the conclusions that Ordover and Bamberger reach are: NASDAQ is subject to significant competitive forces in setting the prices and other terms of execution services and proprietary data products.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and so in the long run reduces the quality of the information generated by the exchange.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its ''Bookviewer'' to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its flat fee or enterprise license options to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for depth-of-book data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for non-core data information is significant and the

[14] *See NetCoalition* at fn. 16.

[15] *See* Securities Exchange Act Release No. 63745 (Jan. 20, 2011); 76 FR 4970 (Jan. 27, 2011) (SR–NASDAQ–2011–010) (attached to original filing as Exhibit 3).

Exchange believes that this proposal clearly evidences such competition. NASDAQ is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

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.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–2011–130 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–2011–130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the 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–2011–130 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26673 Filed 10–14–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65528; File No. SR–NASDAQ–2011–138]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Regarding Expansion of the Short Term Option Series Program

October 11, 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 28, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') 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 Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to expand the Short Term Option Series Program (''STO Program'' or ''Program'')[3] so that the Exchange may select thirty option classes on which Short Term Option Series[4] may be opened; and may open certain Short Term Option Series that are opened by other securities exchanges.

The Exchange requests that the proposal be approved on an accelerated basis.

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–NASDAQ–2010–073) (notice of filing and immediate effectiveness permanently establishing Short Term Option Series Program on NASDAQ). Short term options are generally known as ''STOs'' or ''weeklies.'' The Exchange's STO program was last expanded in 2011, following the lead of other markets that have STO programs. *See* Securities Exchange Act Release No. 64826 (July 6, 2011), 76 FR 40969 (July 12, 2011) (SR–NASDAQ–2011–090) (notice of filing and immediate effectiveness regarding expansion of STO Program).

[4] Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. NOM chapter 1, Section 1(a)(59) and Chapter XIV, Section 2(n).

Filings/, 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

The purpose of this proposed rule change is to amend chapter IV, section 6 and chapter XIV, Section 11 to expand the STO Program so that the Exchange may select thirty option classes on which Short Term Option Series may be opened; and may open Short Term Option Series that are opened by other securities exchanges (the ''STO Exchanges'') in option classes selected by such exchanges under their respective short term option rules.[5]

The STO Program is codified in NOM Chapter IV, Supplementary Material .07 to Section 6 and Chapter XIV, Section 11(h). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. In addition to the fifteen-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.[6] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from fifteen to thirty the number of option classes that may be opened pursuant to the Program and to give the Exchange the ability to open STO Series that are opened by STO Exchanges that, like the Exchange, have short term option programs.[7]

The principal reason for the proposed expansion is market demand for additional STO classes and series. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs,[8] particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms.[9] The Exchange has observed increased demand for STO classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings have occurred.

In order that the Exchange not exceed the fifteen option class and twenty option series restriction, the Exchange has had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO Series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes, or have requested the Exchange to open STO series so that they could execute trading/hedging strategies.

Following is an example of the impact of inadequate STO opportunities. An investor or trader executing a hedging or trading strategy using STOs may need to close his NFLX 240 strike STOs on the Exchange to roll into the 120 strike options. The 120 strike is not offered on the Exchange because of STO Program restrictions; however, it is offered on another exchange. If the trader wants to execute the strategy on the Exchange, he could not do so because the 120 strike order could not be opened on the Exchange and would be rejected. To execute the strategy, the investor would have to close his 240 strike position on the Exchange and then open a 120 strike position on the other exchange that offers the strike. This could ostensibly increase the cost and ''legging risk'' [10] of executing the roll strategy, and negatively impact the time advantage of executing one complex order to roll the position on the Exchange.[11]

Furthermore, the STO option fragmentation may cause confusion for retail customers and discourage them from using complex STO orders when they could be the most advantageous for effective execution of trading and hedging strategies. The Exchange feels that it is essential that such negative, potentially costly and time-consuming impacts on retail investors are eliminated by modestly expanding the

[5] For the filings of STO Exchanges regarding permanent approval of STO programs, *see* Securities Exchange Act Release Nos. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018) (approval order); 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72) (approval order); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–NASDAQ–2010–073) (notice of filing and immediate effectiveness); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–Arca–2010–059) (notice of filing and immediate effectiveness); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–Amex–2010–062) (notice of filing and immediate effectiveness); 62505(July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047)(approval order); and 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR–BATS–2010–020) (notice of filing and immediate effectiveness).

[6] However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Chapter IV, Supplementary Material .07(c) to Section 6 and Chapter XIV, Section 11(h)(iii).

[7] *See* supra note 5. The Exchange notes that the provision allowing the Exchange to open weeklies series that are opened by STO Exchanges is parallel to the provision that allows the Exchange to open weeklies classes that are opened by STO Exchanges.

[8] The Exchange noted, in its last STO Program filing, that a retail investor had recently requested another exchange (Phlx) to reinstate a short term option class that the exchange had to remove from trading because of the five-class option limit within the Program. The investor told Phlx that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. *See* Securities Exchange Act Release No. 64826 (July 6, 2011), 76 FR 40969 (July 12, 2011) (SR–NASDAQ–2011–090) (notice of filing and immediate effectiveness).

[9] These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds, exchange traded notes, currencies, and over the counter instruments.

[10] The risk of not being able to fulfill a particular leg of a strategy or spread at the price required.

[11] Such roll strategies are often executed toward the end of the lifecycle of a weekly option, when theta (time value) decay is increasingly significant and price movement may be accelerated.

Program to enable additional classes and series to be traded. The change proposed by the Exchange should greatly minimize the potential fragmented nature of the short term options program and allow execution of more trading and hedging strategies on the Exchange.[12]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes and reject trading requests on numerous occasions because of the limitations imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes and series for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities.

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.

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 Exchange 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–2011–138 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–2011–138. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2011–138 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26675 Filed 10–14–11; 8:45 am]

BILLING CODE 8011–01–P

[12] In addition to the noted cost and time-value impact, there is also a competitive impact. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategy wholly on their preferred market, namely the Exchange. And second, the proposal would diminish the potential for foregone market opportunity on the Exchange caused by being forced to delist one STO Series in order to list another or to meet market demand.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65529; File No. SR–Phlx–2011–131]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Expand the Short Term Option Program

October 11, 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 28, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

1012 (Series of Options Open for Trading) and Rule 1101A (Terms of Option Contracts) to expand the Short Term Option Program (''STO Program'' or ''Program'')[3] so that the Exchange may: Select thirty option classes on which Short Term Option Series[4] may be opened; and may open certain Short Term Option Series that are opened by other securities exchanges.

The Exchange requests that the proposal be approved on an accelerated basis.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 1012 and 1101A to expand the STO Program so that the Exchange may select thirty option classes on which Short Term Option Series may be opened; and may open Short Term Option Series that are opened by other securities exchanges (the ''STO Exchanges'') in option classes selected by such exchanges under their respective short term option rules.[5]

The STO Program is codified in Commentary .11 to Rule 1012 and Rule 1101A(b)(vi). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. In addition to the fifteen-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.[6] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from fifteen to thirty the number of option classes that may be opened pursuant to the Program and to give the Exchange the ability to open STO Series that are opened by STO Exchanges that, like the Exchange, have short term option programs.[7]

The principal reason for the proposed expansion is market demand for additional STO classes and series. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs,[8] particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms.[9] The Exchange has observed increased demand for STO classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or, large market, sector, or individual issue price swings have occurred.

In order that the Exchange not exceed the fifteen option class and twenty option series restriction, the Exchange has had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO Series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes, or have requested the Exchange to open STO series so that they could execute trading/hedging strategies.

Following is an example of the impact of inadequate STO opportunities. An investor or trader executing a hedging or trading strategy using STOs may need to close his NFLX 240 strike STOs on the Exchange to roll into the 120 strike options. The 120 strike is not offered on the Exchange because of STO Program restrictions; however, it is offered on another exchange. If the trader wants to

[3] *See* Securities Exchange Act Release No. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR–Phlx–2010–84) (notice of filing and immediate effectiveness permanently establishing STO Program on the Exchange). Short term options are generally known as ''STOs'' or ''weeklies.'' The STO Program was last expanded in 2010. *See* Securities Exchange Act Release No. 63875 (February 9, 2011), 76 FR 8793 (February 15, 2011) (SR–Phlx–2010–183) (order approving expansion of STO Program).

[4] Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. Rules 1000(b)(44), 1000A(b)(16), Commentary .11 to Rule 1012 and Rule 1101A(b)(vi).

[5] For the filings of STO Exchanges regarding permanent approval of STO programs, *see* Securities Exchange Act Release Nos. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018) (approval order); 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72) (approval order); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–NASDAQ–2010–073) (notice of filing and immediate effectiveness); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–Arca–2010–059) (notice of filing and immediate effectiveness); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–Amex–2010–062) (notice of filing and immediate effectiveness); 62505(July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047) (approval order); and 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR–BATS–2010–020) (notice of filing and immediate effectiveness).

[6] However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Commentary .11(d) to Rule 1012 and Rule 1101A(b)(vi)(D).

[7] *See* supra note 5. The Exchange notes that the provision allowing the Exchange to open weeklies series that are opened by STO Exchanges is parallel to the provision that allows the Exchange to open weeklies classes that are opened by STO Exchanges.

[8] The Exchange noted, in its last STO Program filing, that it was requested by a retail investor to reinstate a short term option class that the Exchange had to remove from trading because of the five-class option limit within the Program. The investor told the Exchange that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. *See* Securities Exchange Act Release No. 63875 (February 9, 2011), 76 FR 8793 (February 15, 2011) (SR–Phlx–2010–183) (order approving).

[9] These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds, exchange traded notes, currencies, and over the counter instruments.

execute the strategy on the Exchange, he could not do so because the 120 strike order could not be opened on the Exchange and would be rejected. To execute the strategy, the investor would have to close his 240 strike position on the Exchange and then open a 120 strike position on the other exchange that offers the strike. This could ostensibly increase the cost and ''leg risk'' of executing the roll strategy, and negatively impact the time advantage of executing one complex order to roll the position on the Exchange.[10]

Furthermore, the STO option fragmentation may cause confusion for retail customers and discourage them from using complex STO orders when they could be the most advantageous for effective execution of trading and hedging strategies. The Exchange feels that it is essential that such negative, potentially costly and time-consuming impacts on retail investors are eliminated by modestly expanding the Program to enable additional classes and series to be traded. The change proposed by the Exchange should greatly minimize the potential fragmented nature of the short term options program and allow execution of more trading and hedging strategies on the Exchange.[11]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes and reject trading requests on numerous occasions because of the limitations imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes and series for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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 Exchange 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 email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–131. 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 publicly available. All submissions should refer to File Number SR–Phlx–2011–131 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

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[10] Such roll strategies are often executed toward the end of the lifecycle of a weekly option, when theta (time value) decay is increasingly significant and price movement may be accelerated.

[11] In addition to the noted cost and time-value impact, there is also a competitive impact. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategy wholly on their preferred market, namely the Exchange. And second, the proposal would diminish the potential for foregone market opportunity on the Exchange caused by being forced to delist STO Series in order to list another STO or series to meet market demand.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65527; File No. SR–NASDAQ–2011–129]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent the Pilot for NASDAQ Basic

October 11, 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 30, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to establish ''NASDAQ Basic,'' which is a real time data feed combining both NASDAQ's Best Bid and Offer (''QBBO'') and the ''NASDAQ Last Sale.'' [3]

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7047. Nasdaq Basic

(a) [For a five-month pilot period commencing on February 1, 2009,] NASDAQ shall offer proprietary data feeds containing real-time market information from the NASDAQ Market Center. [There shall be no fee for NASDAQ Basic for the first month of the pilot.]

(a)(1)–(2) No change.

(b)–(c) No change.

* * * * *

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ has also filed a companion release to re-institute the fees for NASDAQ Basic. *See* SR–NASDAQ–2011–130. Additionally, NASDAQ is aware that the NASDAQ Basic pilot program has lapsed and NASDAQ intends to submit a separate filing to address the lapsed period shortly.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to establish NASDAQ Basic.[4] NASDAQ Basic offers real-time quotation data in combination with last sale data solely from the NASDAQ Market Center as set forth below. NASDAQ has also filed a companion release to re-institute the fees for NASDAQ Basic.[5]

NASDAQ Basic is a ''Level 1'' product containing two data elements: (1) quotation information from the NASDAQ Market Center and (2) last sale data from the NASDAQ Market Center. NASDAQ Basic is available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for Alternext.

As with the NASDAQ Last Sale product, NASDAQ Basic is designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products. Providing investors with new options for receiving market data, as NASDAQ proposes, was a primary goal of the market data amendments adopted in Regulation NMS. NASDAQ developed these product proposals in consultation with industry members and also market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed.

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 an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes this proposal is in keeping with those principles by promoting increased transparency through the dissemination of NASDAQ Basic and by clarifying its availability. NASDAQ also believes this proposal is consistent with Section 6(b)(5) of the Act by protecting investors and the public interest and promoting just and equitable principles of trade, through providing investors with new options for receiving market data that are in response to market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed.

NASDAQ believes that its NASDAQ Basic market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their

[4] *See* Securities Exchange Act Release No. 59582 (March 16, 2009) 74 FR 12423 (March 24, 2009) (SR–NASDAQ–2008–102).

[5] *Supra* note 3.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

own internal analysis of the need for such data.[9]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. NASDAQ Basic is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

NASDAQ Basic is distributed and purchased on a voluntary basis, in that neither NASDAQ nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Yahoo, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson-Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of depth data attracts order flow. For example, NASDAQ submits that in and of itself, NASDAQ's decision voluntarily to cap fees on existing products, as is the effect of a flat fee or an enterprise license, is evidence of market forces at work.

The court in *NetCoalition* did cite favorably an economic study by Ordover and Bamberger which concluded that ''[a]lthough an exchange may price its trade execution fees higher and its market data fees lower (or vice versa), because of ''platform'' competition the exchange nonetheless receives the same return from the two ''joint products'' in the aggregate.''[10] Ordover and Bamberger also provided additional comments expanding upon the impact of platform competition.[11] Among the conclusions that Ordover and Bamberger reach are: NASDAQ is subject to significant competitive forces in setting the prices and other terms of execution services and proprietary data products.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and so in the long run reduces the quality of the information generated by the exchange.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its ''Bookviewer'' to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its flat fee or enterprise license options to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for depth-of-book data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. NASDAQ is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml.*); or

[10] *See NetCoalition* at fn. 16.

[11] *See* Securities Exchange Act Release No. 63745 (Jan. 20, 2011); 76 FR 4970 (Jan. 27, 2011) (SR–NASDAQ–2011–010) (attached to original filing as Exhibit 3).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b 4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–129 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–2011–129. 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; theCommission 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–2011–129 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26674 Filed 10–14–11; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65524; File No. SR–NYSEAMEX–2011–74]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Amex Equities Rules 132A, 132B, and 132C, Adopting the Text of the FINRA Rule 7400 Series, the Order Audit Trail System (''OATS'') Rules, and Making Certain Conforming Changes

October 7, 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 October 5, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder. 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 delete NYSE Amex Equities Rules 132A, 132B, and 132C, adopt the text of the FINRA Rule 7400 Series, the Order Audit Trail System (''OATS'') Rules, and make certain conforming changes. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Amex Equities Rules 132A, 132B, and 132C (relating to the Exchange's ''Order Tracking System'' or ''OTS''), adopt the text of the FINRA Rules 7400 Series, the OATS Rules, and make certain conforming changes. The Exchange proposes this rule filing in order to prevent the imposition of duplicative regulatory burdens on Exchange member organizations that are also members of FINRA (''Dual Members''). By adopting OATS, Dual Members will need to use only a single system for recording order audit trail information, and will only need to submit such information both for FINRA and Exchange OATS requirements to FINRA, and will not need to make separate OATS submissions to the Exchange.[6]

Background

The Commission has recently approved amendments to the FINRA Rule 7400 Series to extend the OATS recording and reporting requirements to all NMS stocks and to exclude certain firms that have limited trading activities.[7] The FINRA Rule 7400 Series imposes obligations on FINRA members to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in OTC equity securities and equity securities listed and traded on NASDAQ. This information is used by FINRA staff to conduct surveillance and investigations of member firms for

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The proposed rule change would also require NYSE Amex member organizations that are not members of FINRA, which all meet the definition of a Proprietary Trading Firm in proposed NYSE Amex Equities Rule 7410(p) and which must currently comply with OTS, to also meet certain OATS requirements. However, all NYSE Amex non-FINRA members are currently already a member [sic] of The NASDAQ Stock Market, Inc. (''NASDAQ'') and therefore are already subject to substantially similar OATS requirements by virtue of the NASDAQ membership. *See* NASDAQ Rule 6950 Series. Moreover, all such non-FINRA NYSE Amex member organizations have been receiving notices from the Exchange concerning upcoming OATS requirements. *See infra* note 5 [sic].

[7] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (''FINRA Adopting Release'').

violations of FINRA rules and federal securities laws.

By extending the OATS requirements to all NMS stocks, all NYSE Amex, New York Stock Exchange LLC (''NYSE''), and NYSE Arca, Inc.-listed securities will become subject to the OATS requirement beginning October 17, 2011. As noted by FINRA in its rule proposal, by capturing OATS information for all NMS stocks, FINRA will be able to expand its existing surveillance patterns to conduct more comprehensive cross-market surveillance,[8] which is in furtherance of the Exchange's outsourcing of its surveillance and other regulatory functions to FINRA pursuant to a Regulatory Services Agreement.

The Exchange currently requires its member organizations to maintain order information pursuant to NYSE Amex Equities Rule 132B, which is its OTS rule. While the type of information required to be maintained pursuant to OTS is substantially similar to the OATS requirements, member organizations are required to maintain different systems to meet the OTS and OATS requirements. Currently, Dual Members use OATS for NASDAQ-listed securities and OTS for NYSE Amex Equities- and NYSE-listed securities, and there is no duplication.

Proposed Rule Change

Beginning October 17, 2011, Dual Members will become subject to the new FINRA OATS requirements by virtue of their status as FINRA members. Accordingly, by that date, Dual Members will need to update their existing OATS systems to accommodate all NMS stocks, including NYSE Amex-listed securities.[9] The Exchange proposes to harmonize its order tracking rules with the FINRA OATS requirements in order to prevent regulatory duplication for Dual Members. In particular, the Exchange's proposal to adopt the OATS requirements will not require Dual Members to program their OATS systems any differently than they are already required to do so as a result of the FINRA OATS expansion. Moreover, because FINRA provides regulatory services on behalf of the Exchange, Dual Members would only need to report OATS information to FINRA once, both to meet the FINRA and proposed Exchange OATS requirements.

With respect to NYSE Amex member organizations that are not members of FINRA, currently, all such member organizations are already members of NASDAQ, which has certain OATS obligations for proprietary trading firms under the NASDAQ Rule 6950 Series. The proposed OATS obligations for NYSE Amex member organizations that are not FINRA members are substantially similar to the existing NASDAQ OATS requirements for the same firms.

The information required to be reported for member organizations under OATS will be identical to the information required to be reported under OTS. As with OTS, the information captured by OATS will continue to be reported to FINRA and will be used for regulatory purposes only.

Because the FINRA OATS requirements will now capture the same type of information as the Exchange's OTS rules, the Exchange proposes to replace its OTS rules with the OATS requirements by adopting the text of the FINRA Rule 7400 Series as the NYSE Amex Equities Rule 7400 Series, with certain changes.[10] The Exchange believes that by retiring OTS and adopting the OATS rules, the Exchange will further promote cross-market surveillance, reduce duplicative regulatory burdens for Dual Members, and enhance FINRA's ability to conduct surveillance and investigations for the Exchange under the Regulatory Services Agreement.[11]

The proposed NYSE Amex Equities Rule 7400 Series consists of NYSE Amex Equities Rules 7410 through 7470. Proposed NYSE Amex Equities Rule 7410 includes certain definitions to harmonize the NYSE Amex Equities Rule 7400 Series with the FINRA Rule 7400 Series. Proposed NYSE Amex Equities Rule 7410 will include all of the definitions of FINRA Rule 7410, with a few additions. In particular, FINRA Rule 7410(g) and (m) cross reference Exchange rules for the definitions of index arbitrage and program trading. Because the Exchange will be deleting the rules that include those definitions, the Exchange proposes to move the definitions, unchanged, from Rule 132B.10 to proposed NYSE Amex Equities Rule 7410(g) and (m). In addition, similar to NASDAQ Rule 6951(n), the Exchange proposes to add a definition of a proprietary trading firm in NYSE Amex Equities Rule 7410(p). Finally, for clarity, the Exchange proposes to add a definition of ''Exchange System,'' to mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in NMS stocks.

Proposed NYSE Amex Equities Rule 7420 establishes the applicability of the rule to all member organizations and their associated persons and all executed or unexecuted orders for all NMS stocks traded on the Exchange. To harmonize fully with the FINRA requirements, the Exchange proposes to add Supplementary Material .01 with the definition of ''associated person,'' which is not currently defined under the NYSE Amex Equities rules.

Proposed NYSE Amex Equities Rule 7430, which is substantially the same as FINRA Rule 7430, requires member organizations to synchronize and maintain their business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the NYSE Amex Equities rules with reference to a time source designated by the Exchange.

Proposed NYSE Amex Equities Rule 7440, which is based on Nasdaq Rule 6954, incorporates the FINRA Rule 7440 order data recording requirements. FINRA Rule 7440 requires members to record specified order information, including order origination and receipt information and order transmittal information, in a format specified by FINRA. Proposed NYSE Amex Equities Rule 7440 makes clear that pursuant to

[8] *Id.* at 70758.

[9] FINRA has been actively working with all of its members, including Dual Members, to provide technical specifications for FINRA members to update their OATS systems to be compliant by the October 17, 2011 deadline. *See e.g., http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/TechnicalSpecifications/.*

[10] *See* FINRA Adopting Release at 70758 (noting the expectation that Exchange would retire OTS upon the expansion of OATS to all NMS securities). In anticipation of both FINRA's expansion of its OATS requirements to all NMS stocks, including NYSE Amex Equities-listed securities, as well as this proposed rule change, the Exchange has been issuing notifications to member organizations regarding the transition to OATS. Specifically, the Exchange has provided and continues to provide member organizations with details of technological changes that they would need to make both [sic] to comply with the OATS requirements. *See e.g.,* NYSE Euronext Trader Updates dated June 7 and September 1, 2011, available at *http://markets.nyx.com/nyse/trader-updates/view/9760,* and *http://markets.nyx.com/nyse/trader-updates/view/10099,* respectively.

[11] The Exchange further notes that the proposed rule change would exempt from the OATS requirements those orders received by firms that waived into FINRA membership pursuant to NASD IM–1013–l or IM–1013–2 and that limit their business operations to ''permitted floor activities.'' Although these orders would not be required to be reported to OATS under the proposed rule change, much of the information regarding these orders once they are routed to the Exchange would be captured by the Exchange's Front End Systemic Capture System (''FESC'') pursuant to NYSE Amex Equities Rule 123(e). Consequently, information about the order would either be captured by FESC or be reported to OATS. FINRA's existing surveillances already review certain Floor broker trading activity based on FESC data and not OTS data; therefore, the change to OATS will not impact these Floor broker surveillances.

NYSE Amex Equities Rule 0 and the Exchange's Regulatory Services Agreement with FINRA, FINRA will continue to capture order information on behalf of the Exchange and that FINRA Rules 7420 through 7460 will be construed as NYSE Amex Equities Rules 7420 through 7460 for compliance purposes. As such, complying with FINRA Rule 7440 and submitting OATS reports to FINRA will meet the requirements of proposed NYSE Amex Equities Rule 7440; Dual Members will not need to make separate submissions to the Exchange. Proposed NYSE Amex Equities Rule 7440 requires member organizations to assign and enter a unique order identifier to all orders that are electronically transmitted to the Exchange System. Member organizations already use such unique order identifiers when submitting orders to the Exchange and such unique order identifiers will be linked to work with OATS data; thus, the proposed rule change would not impose new or different requirements than currently exist.

As with proposed NYSE Amex Equities Rule 7440, proposed NYSE Amex Equities Rule 7450 requires member organizations to comply with the FINRA Rule 7450 order data transmission requirements as if FINRA Rule 7450 were part of the Exchange's rules. Accordingly, Dual Members who meet the FINRA order data submission requirements will also be meeting the Exchange order data transmission requirements. Similar to Nasdaq Rule 6955, proposed NYSE Amex Equities Rule 7450 will require Proprietary Trading Firms to comply with the order data transmission requirements only when they receive a request from the Exchange, *i.e.,* FINRA, to submit order information.

Proposed NYSE Amex Equities Rule 7460, which is substantially the same as FINRA Rule 7460, states that a violation of the OATS Rules is a violation of NYSE Amex Equities Rule 2010.

Finally, proposed NYSE Amex Equities Rule 7470 establishes the exemptions to the order recording and data transmission requirements for manual orders if the exemption is consistent with the protection of investors and the public interest, subject to certain criteria. The exemption is limited to a period of two years; however, subsequent exemptions may be requested. This proposed rule is also substantially the same as FINRA Amex Equities Rule 7470.

The Exchange proposes several technical changes to FINRA's OATS rule text. First, for consistency with Exchange rules, the Exchange proposes to (i) Change all references from ''members'' to ''member organizations'' and from ''FINRA'' or ''NASDAQ'' to ''the Exchange,''[12] respectively, (ii) add or modify the definitions for ''Exchange System,'' ''Proprietary Trading Firm,'' ''associated person,'' ''Index Arbitrage'' and ''Program Trading,'' as described above and (iii) delete references to ''OTC equity security,'' which do [sic] not trade at the Exchange and thus is a moot reference. Second, rather than adopt the full text of FINRA Rules 7440 and 7450, which detail the recording of order information and order data transmission requirements, the Exchange modeled its proposed NYSE Amex Equities Rules 7440 and 7450 on NASDAQ's Rules 6954 and 6955, which instead cross-reference such requirements.[13] Third, consistent with a recent FINRA rule filing, the Exchange has adopted the July 10, 2015 extension date in NYSE Amex Equities Rule 7470.[14] Finally, the Exchange proposes to delete its OTS requirements as set forth in NYSE Amex Equities Rules 132A,[15] 132B, and 132C and make conforming amendments in NYSE Amex Equities Rules 70, 98, and 123 which contain references to NYSE Amex Equities Rule 132B.

The Exchange proposes to implement the NYSE Amex Equities Rule 7400 Series at the same time that FINRA implements its Rule 7400 Series amendments.[16]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, Dual Members will no longer need to maintain separate systems for reporting order audit trail information to the Exchange and FINRA. Rather, beginning October 17, 2011, Dual Members will only need to maintain a single system, OATS, and report all such OATS information directly to FINRA, thereby reducing their regulatory burden. The changes that Dual Members will be required to make for the FINRA OATS requirements will meet the requirements of the Exchange's proposed adoption of OATS. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are generally technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

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.

[12] The Exchange notes that pursuant to NYSE Amex Equities Rule 0, references to the ''Exchange'' in its rules may also refer to FINRA. The Exchange will advise member organizations via an Information Memo whether a reference to the Exchange in the proposed Rule 7400 Series will require a member organization to report directly to the Exchange or to FINRA on the Exchange's behalf. However, the Exchange anticipates that all OATS reporting will be submitted directly to FINRA, on behalf of the Exchange. To the extent that the Exchange or any of its facilities collect OATS data on behalf of member organizations, such information will be used for regulatory purposes only.

[13] *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10–131).

[14] *See* Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011) (SR–FINRA–2011–029).

[15] NYSE Amex Equities Rule 132A (Synchronization of Member Business Clocks) is being replaced by proposed Rule 7430 (Synchronization of Member Organization Business Clocks).

[16] FINRA has announced that it will begin to phase-in the new recording and reporting requirements under its Rule 7400 Series beginning on October 17, 2011. *See* SR–FINRA–2011–055. FINRA also has announced that members may elect to report all NMS stocks beginning on October 17, 2011; however, only those securities required to be reported within each phase will be subject to all OATS matching processing, with all NMS stocks being reported by November 28, 2011. *See http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P124073.* Until a security is phased-in in accordance with FINRA's schedule, NYSE Amex member organizations must continue to comply with OTS Rules. In other words, NYSE Amex member organizations may not use OATS for all securities on October 17, 2011.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6)(iii) [20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission is waiving the 30-day operative period.[23] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange's OATS requirements to be in place on the same date as the new FINRA OATS requirements. Further, the Commission notes that the proposed rule change is consistent with FINRA and Nasdaq rules previously approved by the Commission. The Commission, therefore, designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2011–74 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–2011–74. 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–NYSEAMEX–2011–74 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Elizabeth M. Murphy,

Secretary.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time, as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65523; File No. SR–NYSE–2011–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rules 132A, 132B, and 132C, Adopting the Text of the FINRA Rule 7400 Series, the Order Audit Trail System (''OATS'') Rules, and Making Certain Conforming Changes

October 7, 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 September 30, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) [5] thereunder. 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 delete NYSE Rules 132A, 132B, and 132C, adopt the text of the FINRA Rule 7400 Series, the Order Audit Trail System (''OATS'') Rules, and make certain conforming changes. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Rules 132A, 132B, and 132C (relating to the Exchange's ''Order Tracking System'' or ''OTS''), adopt the text of the FINRA Rules 7400 Series, the OATS Rules, and make certain conforming changes. The Exchange proposes this rule filing in order to prevent the imposition of duplicative regulatory burdens on Exchange member organizations that are also members of FINRA (''Dual Members''). By adopting OATS, Dual Members will need to use only a single system for recording order audit trail information, and will only need to submit such information both for FINRA and Exchange OATS requirements to FINRA, and will not need to make separate OATS submissions to the Exchange.[6]

Background

The Commission has recently approved amendments to the FINRA Rule 7400 Series to extend the OATS recording and reporting requirements to all NMS stocks and to exclude certain firms that have limited trading activities.[7] The FINRA Rule 7400 Series imposes obligations on FINRA members to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in OTC equity securities and equity securities listed and traded on NASDAQ. This information is used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws.

By extending the OATS requirements to all NMS stocks, all NYSE, NYSE Amex LLC, and NYSE Arca, Inc.-listed securities will become subject to the OATS requirement beginning October 17, 2011. As noted by FINRA in its rule proposal, by capturing OATS information for all NMS stocks, FINRA will be able to expand its existing surveillance patterns to conduct more comprehensive cross-market surveillance,[8] which is in furtherance of the Exchange's outsourcing of its surveillance and other regulatory functions to FINRA pursuant to a Regulatory Services Agreement.

The Exchange currently requires its member organizations to maintain order information pursuant to Rule 132B, which is its OTS rule. While the type of information required to be maintained pursuant to OTS is substantially similar to the OATS requirements, member organizations are required to maintain different systems to meet the OTS and OATS requirements. Currently, Dual Members use OATS for NASDAQ-listed securities and OTS for NYSE- and NYSE Amex Equities-listed securities, and there is no duplication.

Proposed Rule Change

Beginning October 17, 2011, Dual Members will become subject to the new FINRA OATS requirements by virtue of their status as FINRA members. Accordingly, by that date, Dual Members will need to update their existing OATS systems to accommodate all NMS stocks, including NYSE-listed securities.[9] The Exchange proposes to harmonize its order tracking rules with the FINRA OATS requirements in order to prevent regulatory duplication for Dual Members. In particular, the Exchange's proposal to adopt the OATS requirements will not require Dual Members to program their OATS systems any differently than they are already required to do so as a result of the FINRA OATS expansion. Moreover, because FINRA provides regulatory services on behalf of the Exchange, Dual Members would only need to report OATS information to FINRA once, both to meet the FINRA and proposed Exchange OATS requirements.

With respect to NYSE member organizations that are not members of FINRA, currently, all such member organizations are already members of NASDAQ, which has certain OATS obligations for proprietary trading firms under the NASDAQ Rule 6950 Series. The proposed OATS obligations for NYSE member organizations that are not FINRA members are substantially similar to the existing NASDAQ OATS requirements for the same firms.

The information required to be reported for member organizations under OATS will be identical to the information required to be reported under OTS. As with OTS, the information captured by OATS will continue to be reported to FINRA and will be used for regulatory purposes only.

Because the FINRA OATS requirements will now capture the same type of information as the Exchange's OTS rules, the Exchange proposes to replace its OTS rules with the OATS requirements by adopting the text of the FINRA Rule 7400 Series as the NYSE Rule 7400 Series, with certain changes.[10] The Exchange believes that by retiring OTS and adopting the OATS rules, the Exchange will further promote cross-market surveillance, reduce duplicative regulatory burdens for Dual Members, and enhance FINRA's ability to conduct surveillance and investigations for the Exchange under the Regulatory Services Agreement.[11]

[6] The proposed rule change would also require NYSE member organizations that are not members of FINRA, which all meet the definition of a Proprietary Trading Firm in proposed Rule 7410(p) and which must currently comply with OTS, to also meet certain OATS requirements. However, all NYSE non-FINRA members are currently already a member [sic] of The NASDAQ Stock Market, Inc. (''NASDAQ'') and therefore are already subject to substantially similar OATS requirements by virtue of the NASDAQ membership. *See* NASDAQ Rule 6950 Series. Moreover, all such non-FINRA NYSE member organizations have been receiving notices from the Exchange concerning upcoming OATS requirements. *See infra* note 10.

[7] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (''FINRA Adopting Release'').

[8] *Id.* at 70758.

[9] FINRA has been actively working with all of its members, including Dual Members, to provide technical specifications for FINRA members to update their OATS systems to be compliant by the October 17, 2011 deadline. *See e.g., http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/TechnicalSpecifications/*.

[10] *See* FINRA Adopting Release at 70758 (noting the expectation that Exchange would retire OTS upon the expansion of OATS to all NMS securities). In anticipation of both FINRA's expansion of its OATS requirements to all NMS stocks, including NYSE-listed securities, as well as this proposed rule change, the Exchange has been issuing notifications to member organizations regarding the transition to OATS. Specifically, the Exchange has provided and continues to provide member organizations with details of technological changes that they would need to make both [sic] to comply with the OATS requirements. *See e.g.,* NYSE Euronext Trader Updates dated June 7 and September 1, 2011, available at *http://markets.nyx.com/nyse/trader-updates/view/9760*, and *http://markets.nyx.com/nyse/trader-updates/view/10099*, respectively.

[11] The Exchange further notes that the proposed rule change would exempt from the OATS requirements those orders received by firms that waived into FINRA membership pursuant to NASD IM–l013–l or IM–l013–2 and that limit their business operations to ''permitted floor activities.''

Continued

The proposed NYSE Rule 7400 Series consists of NYSE Rules 7410 through 7470. Proposed NYSE Rule 7410 includes certain definitions to harmonize the NYSE Rule 7400 Series with the FINRA Rule 7400 Series. Proposed NYSE Rule 7410 will include all of the definitions of FINRA Rule 7410, with a few additions. In particular, FINRA Rule 7410(g) and (m) cross reference Exchange rules for the definitions of index arbitrage and program trading. Because the Exchange will be deleting the rules that include those definitions, the Exchange proposes to move the definitions, unchanged, from Rule 132B.10 to proposed NYSE Rule 7410(g) and (m). In addition, similar to NASDAQ Rule 6951(n), the Exchange proposes to add a definition of a proprietary trading firm in NYSE Rule 7410(p). Finally, for clarity, the Exchange proposes to add a definition of ''Exchange System,'' to mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in NMS stocks.

Proposed NYSE Rule 7420 establishes the applicability of the rule to all member organizations and their associated persons and all executed or unexecuted orders for all NMS stocks traded on the Exchange. To harmonize fully with the FINRA requirements, the Exchange proposes to add Supplementary Material .01 with the definition of ''associated person,'' which is not currently defined under the NYSE rules.

Proposed NYSE Rule 7430, which is substantially the same as FINRA Rule 7430, requires member organizations to synchronize and maintain their business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the NYSE rules with reference to a time source designated by the Exchange.

Proposed NYSE Rule 7440, which is based on Nasdaq Rule 6954, incorporates the FINRA Rule 7440 order data recording requirements. FINRA Rule 7440 requires members to record specified order information, including order origination and receipt information and order transmittal information, in a format specified by FINRA. Proposed NYSE Rule 7440 makes clear that pursuant to NYSE Rule 0 and the Exchange's Regulatory Services Agreement with FINRA, FINRA will continue to capture order information on behalf of the Exchange and that FINRA Rules 7420 through 7460 will be construed as NYSE Rules 7420 through 7460 for compliance purposes. As such, complying with FINRA Rule 7440 and submitting OATS reports to FINRA will meet the requirements of proposed NYSE Rule 7440; Dual Members will not need to make separate submissions to the Exchange. Proposed NYSE Rule 7440 requires member organizations to assign and enter a unique order identifier to all orders that are electronically transmitted to the Exchange System. Member organizations already use such unique order identifiers when submitting orders to the Exchange and such unique order identifiers will be linked to work with OATS data; thus, the proposed rule change would not impose new or different requirements than currently exist.

As with proposed NYSE Rule 7440, proposed NYSE Rule 7450 requires member organizations to comply with the FINRA Rule 7450 order data transmission requirements as if FINRA Rule 7450 were part of the Exchange's rules. Accordingly, Dual Members who meet the FINRA order data submission requirements will also be meeting the Exchange order data transmission requirements. Similar to Nasdaq Rule 6955, proposed NYSE Rule 7450 will require Proprietary Trading Firms to comply with the order data transmission requirements only when they receive a request from the Exchange, i.e., FINRA, to submit order information.

Proposed NYSE Rule 7460, which is substantially the same as FINRA Rule 7460, states that a violation of the OATS Rules is a violation of NYSE Rule 2010.

Finally, proposed NYSE Rule 7470 establishes the exemptions to the order recording and data transmission requirements for manual orders if the exemption is consistent with the protection of investors and the public interest, subject to certain criteria. The exemption is limited to a period of two years; however, subsequent exemptions may be requested. This proposed rule is also substantially the same as FINRA Rule 7470.

The Exchange proposes several technical changes to FINRA's OATS rule text. First, for consistency with Exchange rules, the Exchange proposes to (i) change all references from ''members'' to ''member organizations'' and from ''FINRA'' or ''NASDAQ'' to ''the Exchange,'' [12] respectively, (ii) add or modify the definitions for ''Exchange System,'' ''Proprietary Trading Firm,'' ''associated person,'' ''Index Arbitrage'' and ''Program Trading,'' as described above and (iii) delete references to ''OTC equity security,'' which do [sic] not trade at the Exchange and thus is a moot reference. Second, rather than adopt the full text of FINRA Rules 7440 and 7450, which detail the recording of order information and order data transmission requirements, the Exchange modeled its proposed Rules 7440 and 7450 on NASDAQ's Rules 6954 and 6955, which instead cross-reference such requirements.[13] Third, consistent with a recent FINRA rule filing, the Exchange has adopted the July 10, 2015 extension date in NYSE Rule 7470.[14] Finally, the Exchange proposes to delete its OTS requirements as set forth in NYSE Rules 132A,[15] 132B, and 132C and make conforming amendments in NYSE Rules 70, 98, 123, and 1600 which contain references to NYSE Rule 132B.

The Exchange proposes to implement the NYSE Rule 7400 Series at the same time that FINRA implements its Rule 7400 Series amendments.[16]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the

Although these orders would not be required to be reported to OATS under the proposed rule change, much of the information regarding these orders once they are routed to the Exchange would be captured by the Exchange's Front End Systemic Capture System (''FESC'') pursuant to NYSE Rule 123(e). Consequently, information about the order would either be captured by FESC or be reported to OATS. FINRA's existing surveillances already review certain Floor broker trading activity based on FESC data and not OTS data; therefore, the change to OATS will not impact these Floor broker surveillances.

[12] The Exchange notes that pursuant to NYSE Rule 0, references to the ''Exchange'' in its rules may also refer to FINRA. The Exchange will advise member organizations via an Information Memo whether a reference to the Exchange in the proposed Rule 7400 Series will require a member organization to report directly to the Exchange or to FINRA on the Exchange's behalf. However, the Exchange anticipates that all OATS reporting will be submitted directly to FINRA, on behalf of the Exchange. To the extent that the Exchange or any of its facilities collect OATS data on behalf of member organizations, such information will be used for regulatory purposes only.

[13] *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10–131).

[14] *See* Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011) (SR–FINRA–2011–029).

[15] NYSE Rule 132A (Synchronization of Member Business Clocks) is being replaced by proposed Rule 7430 (Synchronization of Member Organization Business Clocks).

[16] FINRA has announced that it will begin to phase-in the new recording and reporting requirements under its Rule 7400 Series beginning on October 17, 2011. *See* SR–FINRA–2011–055. FINRA also has announced that members may elect to report all NMS stocks beginning on October 17, 2011; however, only those securities required to be reported within each phase will be subject to all OATS matching processing, with all NMS stocks being reported by November 28, 2011. *See http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P124073*. Until a security is phased-in in accordance with FINRA's schedule, NYSE member organizations must continue to comply with OTS Rules. In other words, NYSE member organizations may not use OATS for all securities on October 17, 2011.

Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, Dual Members will no longer need to maintain separate systems for reporting order audit trail information to the Exchange and FINRA. Rather, beginning October 17, 2011, Dual Members will only need to maintain a single system, OATS, and report all such OATS information directly to FINRA, thereby reducing their regulatory burden. The changes that Dual Members will be required to make for the FINRA OATS requirements will meet the requirements of the Exchange's proposed adoption of OATS. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are generally technical in nature and do not change the substance of the proposed NYSE Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6)(iii)[20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission is waiving the 30-day operative period.[23] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange's OATS requirements to be in place on the same date as the new FINRA OATS requirements. Further, the Commission notes that the proposed rule change is consistent with FINRA and Nasdaq rules previously approved by the Commission. The Commission, therefore, designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–49. 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 availablepublicly. All submissions should refer to File Number SR–NYSE–2011–49 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Elizabeth M. Murphy,

Secretary.

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[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time, as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65525; File No. SR–NASDAQ–2011–139]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Fee for the NASDAQ MatchView Feed

October 11, 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 29, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') 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 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 establish a fee for the NASDAQ MatchView Feed (the ''Feed''). The Feed provides a view of how the Exchange views the Best Bid and Offer (''BBO'') available from away market centers for each individual security the Exchange trades. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposal regards the NASDAQ MatchView Feed (formerly known as the NASDAQ Ouch BBO Feed). The Feed is currently available to all Exchange members and market participants equally at no charge, offering all participants transparent, real-time data concerning the Exchange's view of the BBO data. NASDAQ is proposing to establish the following monthly distributor fees for internal distribution:

Entitlement name	Monthly fee
NASDAQ MatchView	$5,000 per firm for 1st server.
NASDAQ MatchView Enterprise License.	$10,000 per firm for 2+ servers.

This new Distributor fee for the MatchView Feed is completely separate from the underlying fees associated with each data feed product used to calculate the MatchView data. The Exchange makes the Feed available on a subscription basis to market participants that are connected to the Exchange whether through extranets, direct connection, or Internet-based virtual private networks.

MatchView reflects the Exchange's view of the BBO data, at any given time, based on orders executed on the Exchange and on quote information from the network processors and individual exchange bids and offers received either from the network processor or directly from an exchange that disseminates bids and offers to vendors via a proprietary data feed.[3] The Feed contains the following data elements: symbol, bid price, and ask price.[4] Unlike the Nasdaq TotalView feed, the MatchView feed does not contain information about individual orders, either those residing within the Exchange system or those executed or routed by the Exchange. Unlike the network processor feeds containing the National Best Bid and Offer (''NBBO''), the MatchView Feed does not identify either the market center quoting the BBO or the size of the BBO quotes. It merely contains the symbol and bid and offer prices.

NASDAQ has continued to enhance the Feed to increase market transparency and foster competition among orders and markets. NASDAQ believes the Feed is valuable to member firms in that they may use the Feed to more accurately price their orders based on the information within this product, including bids and offers received via proprietary data feeds. As a consequence, member firms may more accurately price their orders on the Exchange, thereby avoiding price adjustments by the Exchange based on a quote that is no longer available. Additionally, members can use the Feed to price orders more aggressively to narrow the BBO and provide better reference prices for investors.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its MatchView data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS

[3] For a more detailed description of the contents of the MatchView Feed, *see* Securities Exchange Act Release No. 65159 (Aug. 18, 2011); 76 FR 53007 (Aug. 24, 2011) (SR–NASDAQ–2011–118). NASDAQ is proposing no changes to the MatchView Feed from the existing, filed feed.

[4] The Feed also contains a time stamp and message type field for reference.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equitysecurities.' '' [8]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[9] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ quotation data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its MatchView Data Products is constrained by (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary quotation data.

The market for proprietary quotation data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service.[10] In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to ''upgrade'' the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the Internet after being purchased).[11] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing order are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost

[8] *NetCoaliton,* at 535.

[9] It should also be noted that Section 916 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a formal proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

[10] *See* Exhibit 3, Statement of Janusz Ordover and Gustavo Bamberger, Compass Lexecon LLC, dated December 29, 2010.

[11] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as MatchView that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as MatchView can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the Internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of MatchView, the data provided through that product appears both in (i) Real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in quotation products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers:

Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as quotation data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as MatchView is borne out by the performance of the market. One example is the NASDAQ Last Sale product, set forth in NASDAQ Rule 7039. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS entitlements (including only NASDAQ Listed securities), and $150,000 for customers receiving both entitlements (NASDAQ and NYSE/AMEX Listed securities. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core data, rather than as products that must be obtained in tandem. For example, while the internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of MatchView would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting MatchView data revenues, the value of MatchView as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the MatchView Products, NASDAQ considered the competitiveness of the market for quotation data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to MatchView, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the MatchView product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] 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:

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–2011–139 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–2011–139. This file number should be included on the subject line if e-mail is used. To help the

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–139 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26672 Filed 10–14–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7647]

60-Day Notice of Proposed Department of State Standard Terms and Conditions for Domestic Federal Assistance Awards

ACTION: Notice of Standard Terms and Conditions for Domestic Federal Assistance Awards at the Department of State.

SUMMARY: The Department of State has submitted the following Standard Terms and Conditions in accordance with Title 2 Government-wide Grants and Agreements that are subject to 2 CFR part 215, Office of Management and Budget (OMB) Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.'' This request to the Office of Management and Budget (OMB) for approval is in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments to the U.S. Department of State, Federal Assistance Division, Point of Contact Kimberly S. Butler at: *ButlerKS2@state.gov* for up to 60 days from October 17, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Procurement Executive, Federal Assistance Division (A/OPE/FA). You may submit comments by the following methods:

- *E-mail:* Kimberly S. Butler, *ButlerKS2@state.gov.* You must include OMB control number in the subject line of your message.
- *Fax:* 703–875–6155. *Attention:* Kimberly S. Butler, Desk Officer for the Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed via Web site by going to *http://fa.statebuy.state.gov,* click on ''Proposed Standard Terms and Conditions'' for comment.

SUPPLEMENTARY INFORMATION:

I. *Background and Purpose of Today's Federal Register Notice:* This proposal establishes uniform administrative requirements for the U.S. Department of State Federal Assistance awards (Grants and Cooperative Agreements) awarded to institutions of higher education, hospitals, other non-profit and commercial organizations. The Grants Officer shall incorporate this part into federal assistance awards made to organizations to which it will be applied. The Department of State shall not impose inconsistent requirements, except as provided or required by Federal statute or Executive Order. This part applies to federal assistance, grants and cooperative agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials. Non-profit organizations that implement Federal programs for States are also subject to State requirements.

Dated: October 7, 2011.

Kimberly S. Butler,

Acting, Federal Assistance Director, Office of the Procurement Executive, Department of State.

[FR Doc. 2011–26781 Filed 10–14–11; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Passenger Facility Charge (PFC) Application 10–16–U–00–OAK To Use PFC Revenue, Collected at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue collected at Metropolitan Oakland International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (Title 14 CFR part 158).

DATES: Comments must be received on or before November 16, 2011.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Deborah Ale-Flint, Director of Aviation, Metropolitan Oakland International Airport, at the following address: Port of Oakland, 530 Water Street, Oakland, California 94604. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arlene Draper, Assistant Manager, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, *Telephone:* (650) 876–2778, extension 601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use PFC revenue collected at Metropolitan

Oakland International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (Title 14 CFR part 158).

On October 11, 2011, the FAA determined that the application to use PFC revenue submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 18, 2012.

The following is a brief overview of the use application No. 11–16–U–00–OAK:

Proposed charge effective date: April 1, 2021.

Proposed charge expiration date: May 1, 2023.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $70,259,000.

Description of Proposed Project

Use PFC only: San Francisco Bay Area Rapid Transit District (BART) Airport Connector—The project will provide a direct people mover connection between the Coliseum BART station and Metropolitan Oakland International Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Lawndale, California, on October 11, 2011.

Debbie Roth,

Deputy Manager, Airports Division, Western-Pacific Region.

[FR Doc. 2011–26792 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Surplus Property Release at Laurinburg-Maxton Airport, Maxton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Laurinburg-Maxton Airport Commission to waive the requirement that approximately 20.26 acres of airport property, located at the Laurinburg-Maxton Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before November 16, 2011.

ADDRESSES: Comments on this notice May be mailed or delivered in triplicate to the FAA at the following address:

Atlanta Airports District Office, Attn: Rusty Nealis, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to JoAnn Gentry, Executive Director, Laurinburg-Maxton Airport Commission at the following address:

Laurinburg-Maxton Airport Commission, 16701 Airport Road, Maxton, NC 28364.

FOR FURTHER INFORMATION CONTACT: Rusty Nealis, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7142. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Laurinburg-Maxton Airport Commission to release approximately 20.26 acres of airport property at the Laurinburg-Maxton Airport. The property consists of one parcel located north of S.R. 1434, Airport Road. This property is currently shown on the approved Airport Layout Plan as non-aeronautical use land and the proposed use of this property is compatible with airport operations. The City will ultimately sell the property for future industrial use with proceeds of the sale providing funding for future airport development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Laurinburg-Maxton Airport.

Issued in Atlanta, Georgia on October 6, 2011.

Larry F. Clark,

Assistant Manager, Atlanta Airports District Office Southern Region.

[FR Doc. 2011–26759 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Submission Deadline for Schedule Information for San Francisco International Airport for the Summer 2012 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the designation of San Francisco International Airport (SFO) as a Level 2 airport under the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG) effective for the Summer 2012 scheduling season. The FAA has determined this designation is necessary based primarily on runway capacity, existing congestion and delays, and expected increased congestion due to a multi-year airport construction project. The FAA announces a deadline of October 20, 2011, for carriers to submit to the FAA schedule information for all planned operations at SFO between the hours of 0600 and 2259, Pacific time, (1300 and 0559 UTC). This deadline is a week later than the IATA deadline due to late notice of the Level 2 designation. The FAA will grant an additional short extension if a carrier requires additional time to complete its initial submission, provided that extension would not impede preparations for the IATA Schedules Conference in November 2011.

DATES: Schedules must be submitted no later than October 20, 2011.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; *facsimile:* 202–267–7277; or by e-mail to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone number:* 202–267–7143; *fax number:* 202–267–7971; *e-mail: rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION: IATA guidelines define a Level 2 airport as one where there is the potential for congestion during some periods of the day, week, or season, which can be resolved by voluntary cooperation between airlines. The FAA has determined that SFO should be designated as Level 2 based primarily on runway capacity, existing congestion

and delays, and the potential that congestion may increase during construction of Runway Safety Areas (RSA) from 2012 to 2015.

The FAA has reviewed runway capacity at SFO over the last two years. The airport acceptance rate for arrivals ranges between approximately 30 and 48 per hour depending on weather conditions. The lower value reflects operations in instrument meteorological conditions, and the higher value reflects visual meteorological conditions. A number of other variables impact an airport's arrival and departure rates, including runway configuration, fleet mix, surface movements, and individual aircraft performance.

The FAA, the airport authority, and other stakeholders (including representatives of carriers operating at SFO) have been meeting regularly to review construction plans, identify ways to improve airport and airspace efficiency, and mitigate construction impacts whenever possible. These efforts will continue with the goal to mitigate negative impacts to capacity, but the FAA expects some decrease in runway capacity during construction. The construction's impact to capacity is not definitively known but will be determined as construction plans are finalized. Accordingly, it is not possible to specifically define runway capacity limits. In conducting its review of planned schedules, the FAA will consider factors such as average runway arrival and departure rates, historical demand, experienced congestion and delays, and projections on operational impacts related to the construction.

The FAA will review the cumulative scheduled flight information beginning with the Summer 2012 scheduling season to monitor major scheduling peaks that could result in lengthy delays. This advance review of schedule information would permit the FAA to discuss the operational implications of proposed schedules and suggest changes before schedules are finalized and published. The FAA expects the Level 2 review alone may not reduce existing congestion and delays. Rather, the FAA expects to mitigate potential delay increases resulting from new or retimed flights. The FAA believes there is available capacity at SFO, especially during off-peak times, to accommodate additional operations. During the construction, forecasted congestion and delays could be mitigated through voluntary carrier scheduling decisions (such as retiming operations to less congested times and reducing overall operations by combining frequencies and upgauging aircraft). The FAA believes a Level 2 designation would provide the necessary information to assist carriers with these voluntary scheduling decisions.

Finally, the FAA expects the Level 2 designation will allow interested parties to address any imbalance between demand and capacity and work cooperatively to reduce delays. The FAA supports the Level 2 process as a preferred and viable alternative to full slot coordination under Level 3 or other administrative actions to address congestion during the RSA construction. The FAA will review the Level 2 designation, at a minimum, in advance of each scheduling season.

Accordingly, the FAA designates SFO as a Level 2 airport between the hours of 0600 and 2259, Pacific time, (1300 and 0559 UTC), but carriers may submit schedule information for any time throughout the day. Carriers should submit to the FAA schedule information for all planned operations no later than October 20, 2011. This deadline is one week later than the IATA deadline because of the late designation of SFO as Level 2.

The FAA recognizes some carriers may have difficulty meeting the schedule submission deadline. While most have at least preliminary schedule plans, some may require additional time to prepare the initial schedule submission. The FAA will grant an additional short extension (not exceeding two weeks). The FAA intends to follow the IATA WSG for the mid-November Schedules Conference to the extent possible and needs schedules as soon as possible to meet IATA deadlines.

Carriers should submit schedule information in sufficient detail including, at minimum, the carrier, flight number, scheduled time of arrival or departure, half-hour period, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual or SSIM) may be submitted and may provide additional information that could be beneficial in assessing operational impacts.

The summer scheduling season is from March 25, 2012, through October 27, 2012, in recognition of the IATA scheduling season dates. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates, and the FAA will accommodate these to the extent possible.

SFO currently is designated Level 2 for certain international passenger terminal facilities. This notice does not replace that local schedule facilitation process. Carriers should submit schedule information to the local facilitator according to the IATA schedule. The FAA will work with the local facilitator to ensure consistency of planned schedule information.

Issued in Washington, DC, on October 11, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–26774 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0275]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 5 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before November 16, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0275 using any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 5 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Michael W. Gibbs

Mr. Gibbs, age 41, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye 20/60, and in his left eye 20/20. Following an examination in 2011, his optometrist noted, ''In my medical opinion, Michael W. Gibbs has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gibbs reported that he has driven straight trucks for 12 years, accumulating 300,000 miles. He holds a Class C operator's license from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frank E. Johnson, Jr.

Mr. Johnson, 36, has had corneal opacification in his left eye due to a truamatic injury since childhood. The best corrected visual acuity in his right eye 20/20 and in his left eye, 20/400. Following an examination in 2011, his optometrist noted, ''In my medical opinion, Mr. Johnson certainly has sufficient vision and visual field to perform the driving tasks required to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 15 years, accumulating 93,600 miles. He holds a Class C operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael J. Robinson

Mr. Robinson, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Robinson, due to his years of compensating for amblyopia and having had his commercial operator's license for 26 years, has sufficient vision to operate a commercial vehicle.'' Mr. Robinson reported that he has driven straight trucks for 26 years, accumulating 52,000 miles and tractor-trailer combinations for 26 years, accumulating 2.3 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Fred L. Stotts

Mr. Stotts, 52, has had complete loss of vision in his left eye due to an injury sustained 15 years ago. The best corrected visual acuity in his right eye 20/20. Following an examination in 2011, his optometrist noted, ''I would recommend Mr. Leroy Stotts to qualify for a vision exemption to operate a commercial motor vehicle without restriction.'' Mr. Stotts reported that he has driven straight trucks for 36 years, accumulating 1.6 million miles and tractor-trailer combinations for 27 years, accumulating 945,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James D. Zimmer

Mr. Zimmer, 52, has an enucleation of his right eye due to an injury sustained in January 2007. The best corrected visual acuity in his left eye 20/20. Following an examination in 2011, his optometrist noted, ''Yes, sufficient vision to operate a commercial vehicle.'' Mr. Zimmer reported that he has driven straight trucks for 35 years, accumulating 605,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business November 16, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: October 11, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011–26747 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0277]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 16, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0277 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow theon-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions

Each submission must include the Agency name and the docketnumbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket

For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act

Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the**Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://www.edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Norman Billie

Mr. Billie, age 52, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Billie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Billie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Utah.

Jeffry L. Bromby

Mr. Bromby, 45, has had ITDM since 1998. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bromby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bromby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Glenn W. Burke

Mr. Burke, 59, has had ITDM since approximately 2002. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

David P. Charest

Mr. Charest, 53, has had ITDM since 1988. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Charest understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Charest meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His

ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Matthew J. Cipolloni

Mr. Cipolloni, 48, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cipolloni understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cipolloni meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Donald N. Ellis

Mr. Ellis, 61, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ellis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ellis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Timothy J. Flynn

Mr. Flynn, 33, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes since diagnosed in 2009. His endocrinologist certifies that Mr. Flynn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Flynn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Iowa.

Michael T. Heath

Mr. Heath, 35, has had ITDM since 1994. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heath understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heath meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A operator's license from Georgia.

Edward L. Keith

Mr. Keith, 55, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Thomas J. Kelley

Mr. Kelley, 56, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kelley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kelley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Jackie L. Lane

Mr. Lane, 53, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lane understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lane meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Texas.

Michael J. Miller

Mr. Miller, 40, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jeremy R. Pendergrass

Mr. Pendergrass, 23, has had ITDM since 2002. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pendergrass understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Pendergrass meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Cory J. Rickerl

Mr. Rickerl, 28, has had ITDM since 1995. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 4 years. His endocrinologist certifies that Mr. Rickerl understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rickerl meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Phillip D. Ross

Mr. Ross, 58, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ross understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ross meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Dennis R. Scheel

Mr. Scheel, 65, has had ITDM since 1985. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Scheel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scheel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Michael K. Schulist

Mr. Schulist, 44, has had ITDM since 1989. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schulist understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schulist meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Michigan.

Andrew P. Shirk

Mr. Shirk, 33, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shirk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shirk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Mississippi.

Jerry L. Smit

Mr. Smit, 51, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smit understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smit meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Charles R. Tomassi

Mr. Tomassi, 57, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tomassi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tomassi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Randy J. Voss

Mr. Voss, 55, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Voss understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Voss meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in

this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring, and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: October 6, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011–26746 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0190]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 14 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before November 16, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0190 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 14 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Kevin G. Clem

Mr. Clem, 49, has had retinal detachment in his left eye due to a traumatic injury that occurred in 1982. The best corrected visual acuity in his right eye is 20/15, and in his left eye is 20/600. Following an examination in 2011, his ophthalmologist noted, ''Kevin has driven with a commercial driver's license for years and, in my opinion, his visual and ocular functioning would not restrict his ability to continue driving commercially.'' Mr. Clem reported that he has driven tractor-trailer combinations for 9½ years, accumulating 665,000 miles. He holds a

Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard A. Hackney

Mr. Hackney, 36, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, hand motion vision. Following an examination in 2011, his ophthalmologist noted, ''It is my medical opinion that Mr. Hackney has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hackney reported that he has driven straight trucks for 15 years, accumulating 30,000 miles. He holds a Class E operator's license from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rocky J. Lachney

Mr. Lachney, 28, has had amblyopia in his right eye since birth. The best corrected visual acuity in his left eye is 20/20, and in his right eye, 20/150. Following an examination in 2011, his optometrist noted, ''I certify, in my opinion, he has sufficient vision to safely drive a commercial vehicle.'' Mr. Lachney reported that he has driven straight trucks for 6 years, accumulating 28,800 miles and tractor-trailer combinations for 6 years, accumulating 600 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Herman Martinez

Mr. Martinez, 55, has had complete loss of vision in his right eye due to an injury sustained in 1976. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2011, his ophthalmologist noted, ''It is my opinion, Mr. Martinez has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Martinez reported that he has driven straight trucks for 34 years, accumulating 136,000 miles and tractor-trailer combinations for 21 years, accumulating 84,000 miles. He holds a Class D operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles L. McClendon

Mr. McClendon, 48, has a prosthetic left eye, due to injury since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, ''In my professional opinion, Mr. McClendon is visually qualified to operate a commercial vehicle.'' Mr. McClendon reported that he has driven straight trucks for 7 years, accumulating 84,000 miles. He holds a Class E operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald L. Pagan

Mr. Pagan, 50, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/350. Following an examination in 2011, his optometrist noted, ''I, Andrew J. Lovsin, OD, certify that Mr. Jerry Pagan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pagan reported that he has driven tractor-trailer combinations for 4 years, accumulating 436,800 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one crash, for which he was not cited and no convictions for moving violations in a CMV.

Danny C. Pope

Mr. Pope, 50, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, light perception. Following an examination in 2011, his optometrist noted, ''He will be able to drive a commercial vehicle since he is correctable to 20/20 in his right eye.'' Mr. Pope reported that he has driven straight trucks for 6 years, accumulating 294,000 miles and tractor-trailer combinations for 31 years, accumulating 2.6 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David A. Rice

Mr. Rice, 47, has a prosthetic left eye due to a traumatic injury sustained in 2000. The best corrected visual acuity in his right eye is 20/30. Following an examination in 2011, his optometrist noted, ''I feel he has sufficient vision to perform his commercial vehicle driving tasks.'' Mr. Rice reported that he has driven straight trucks for 16 years, accumulating 3,200 miles and tractor-trailer combinations for 16 years, accumulating 3,200 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Levi A. Shetler

Mr. Shetler, 38, has had central retinal vein occlusion in his right eye since 2006. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''It is my opinion that Mr. Shetler does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Shetler reported that he has driven straight trucks for 3½ years, accumulating 28,000 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rick E. Smith

Mr. Smith, 52, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2011, his optometrist noted, ''Please be advised that I have certified that Rick Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 31 years, accumulating 930,000 miles and tractor-trailer combinations for 31 years, accumulating 930,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Juan E. Sotero

Mr. Sotero, 47, has had postenor ureal malignant melanoma in his right eye since 2000. The best corrected visual acuity in his right eye is 20/300, and in his left eye is 20/25. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Sotero has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sotero reported that he has driven straight trucks for 5.9 years, accumulating 44,250 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randell K. Tyler

Mr. Tyler, 40, has had complete loss of vision in his right eye due to toscoplasmosis since childhood. The visual acuity in his left eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''I feel he has sufficient vision to drive a commercial vehicle.'' Mr. Tyler reported that he has driven straight trucks for 10 years, accumulating 200,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last

3 years shows no crashes and no convictions for moving violations in a CMV.

Steven R. Wetlesen

Mr. Wetlesen, 44, has had retinal detachment in his left eye due to an injury sustained at age 14. The best corrected visual acuity in his right eye is 20/20 and in his left eye light perception only. Following an examination in 2011, his ophthalmologist noted, ''Mr. Wetlesen has stable visual impairment of the left eye due to trauma. No significant change in his eye exam is anticipated. Given that he has safely operated commercial vehicles in the past, I am of the medical opinion that he is safe to continue operating commercial vehicles.'' Mr. Wetlesen reported that he has driven straight trucks for 11 years, accumulating 220,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey K. Yockey

Mr. Yockey, 51, has had cataract and a retinal scar in his left eye due to an injury since age 10. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2011, his optometrist noted, ''I believe that Mr. Yockey meets the criteria you specify and that he has sufficient vision to perform the essential tasks of driving a commercial vehicle.'' Mr. Yockey reported that he has driven tractor-trailer combinations for 33 years, accumulating 4.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and two convictions for speeding in a CMV; in the first instance, he exceeded the speed limit by 11 mph and in the second incidence, he exceeded the speed limit by 4 mph.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business November 16, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: October 6, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011–26690 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2006–26066; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009-0154]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 30, 2011. Comments must be received on or before November 16, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2006–26066; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 17 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are the following:

Tracy A. Ammons
David N. Cleveland
Randy B. Combs
Robert L. Cross, Jr.
James E. Davis
Thomas E. Dixon
Edward J. Genovese
Dewayne E. Harms
David F. LeClerc
Marvin L. Motes
Stephen Pozharsky
Donald J. Snider
Jesse L. Townsend
Humberto A. Valles
James A. Welch
Edward W Yeates, Jr.
Michael E. Yount

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 68195; 65 FR 20251; 66 FR 30502; 66 FR 41654; 68 FR 54775; 67 FR 17102; 68 FR 52811; 68 FR 61860; 70 FR 61165;71 FR 63379; 72 FR 1050; 72 FR 39879; 72 FR 46261; 72 FR 52419; 72 FR 53581; 72 FR 54972; 72 FR 58359 74 FR 37295; 74 FR 48343; 74 FR 53581). Each of these 17 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 16, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 17 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: October 6, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–26689 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2011–001–N–13]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than December 16, 2011.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0556 .'' Alternatively, comments may be transmitted via facsimile to (202) 493–

6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (*telephone:* (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICR that FRA will submit for clearance by OMB as required under the PRA:

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Abstract: Part 241 requires, in the absence of a waiver, that all dispatching of railroad operations that occurs in the United States be performed in this country, with a minor exception. A railroad is allowed to conduct extraterritorial dispatching from Mexico or Canada in emergency situations, but only for the duration of the emergency. A railroad relying on the exception must provide written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation. The information collected under this rule will be used as part of FRA's oversight function to ensure that extraterritorial dispatchers comply with applicable safety regulations. FRA estimates that approximately one (1) Notification per year will be sent to the appropriate FRA Regional Administrators regarding dispatching under the circumstances described above. It is estimated that it will take the dispatching railroad approximately eight (8) hours to prepare each notification letter and send it to the appropriate FRA Regional Administrator.

Affected Public: Railroads.

Respondent Universe: 4 Railroads.

Frequency of Submission: On Occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
241.9—Prohibition against extraterritorial dispatching; exceptions—Notification.	4 railroads	1 notification	8 hours	8 hours.
241.11—Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	4 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.13—Prohibitions against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	4 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.15—Penalties—False Reports/Records	$628	None	N/A	N/A.

Total Responses: 1.

Estimated Total Annual Burden: 8 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on October 6, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–26592 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0149]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice—National Emergency Medical Services Advisory Council.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC, area. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to DOT's NHTSA.

DATES: The meeting will be held on December 13, 2011, from 1 p.m. to 5 p.m. E.S.T., and on December 14, 2011, from 8 a.m. to 12 p.m. E.S.T. A public comment period will take place on December 13, 2011, between 3:30 p.m. and 4:30 p.m. E.S.T. Written comments or requests to make oral presentations must be received by December 8, 2011.

ADDRESSES: The meeting will be held at the Key Bridge Marriott at 1401 Lee Highway, Arlington, Virginia 22209.

Written comments and requests to make oral presentations at the meeting should reach Drew Dawson or Noah Smith at the address listed below and should be received by December 8, 2011. All submissions received may be submitted by either one of the following methods: (1) You may submit comments by *e-mail: drew.dawson@dot.gov* or *noah.smith@dot.gov* or (2) you may submit comments by *fax:* 202–366–7149.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, U.S. Department of Transportation, Office of Emergency Medical Services, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, telephone number 202–366–9966; e-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.). The NEMSAC will meet on Tuesday and Wednesday, December 13–14, 2011, at the Key Bridge Marriott at 1401 Lee Highway, Arlington, Virginia 22209.

Agenda of National EMS Advisory Council Meeting, December 13–14, 2011

The tentative agenda includes the following:

Tuesday, December 13, 2011

(1) Opening Remarks.

(2) Introduction of Members and All in Attendance.

(3) Review and Approval of Minutes of Last Meeting.

(4) Update from NHTSA Office of EMS.

(5) Presentation of the Draft Culture of Safety Strategy.

(6) Federal Partner Update.

(7) Public Comment Period.

(8) Business of the Council.

Wednesday, December 14, 2011

(1) Presentations from NEMSAC Committees.

(2) Deliberations of Committee Documents.

(3) Discussion of New and Emerging Issues.

(4) Unfinished Business/Continued Discussion from Previous Day.

(5) Next Steps and Adjourn.

A public comment period will take place on December 13, 2011, between 3:30 p.m. and 4:30 p.m. E.S.T.

Public Attendance: This meeting will be open to the public. There will not be a teleconference option for this meeting. Individuals wishing to attend must provide their name, affiliation, phone number, and e-mail address to Noah Smith by e-mail at *Noah.Smith@dot.gov* or by telephone at 202–366–5030 no later than December 8, 2011.

Members of the public who wish to make comments on Tuesday, December 13, 2011, between 3:30 p.m. and 4:30 p.m. E.S.T. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Minutes of the NEMSAC Meeting will be available to the public online through *http://www.ems.gov.*

Issued on: October 12, 2011.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2011–26756 Filed 10–14–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Public Input on the Report to Congress on How To Modernize and Improve the System of Insurance Regulation in the United States

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comment.

SUMMARY: Section 313(p) of Title 31 of the United States Code, as codified by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) (the ''Dodd-Frank Act'') requires the Federal Insurance Office (the ''FIO'') to conduct a study on how to modernize and improve the system of insurance regulation in the United States. The study must be submitted to Congress not later than 18 months after the date of the Dodd-Frank Act's enactment. To assist the FIO in conducting the study and formulating its recommendations, the FIO is issuing this request for comment.

DATES: *Comment Due Date:* December 16, 2011. Early submissions are encouraged.

ADDRESSES: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions. Comments will be available at *http://www.regulations.gov* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Electronic submissions are encouraged.

Comments may also be mailed to the Department of the Treasury, Federal Insurance Office, MT 1001, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Additional Instructions. Responses should also include: (1) The data or rationale, including examples, supporting any opinions or conclusions; (2) approaches and options toward improvement or modernization, if any; and, (3) any specific legislative, administrative, or regulatory proposals for carrying out such approaches or options.

FOR FURTHER INFORMATION CONTACT: Federal Insurance Office, Department of Treasury, at (202) 622–3137.

SUPPLEMENTARY INFORMATION:

I. Background:

The Dodd-Frank Act requires the FIO to conduct a study on how to modernize and improve the system of insurance regulation in the United States (31 U.S.C. 313(p)(1)). This study will be based on and guided by the considerations and factors listed in the statute.

II. Solicitation for Comments:

Commenters are invited to submit views on:

1. Systemic risk regulation with respect to insurance;
2. Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk;
3. Consumer protection for insurance products and practices, including gaps in State regulation and access by traditionally underserved communities and consumers, minorities, and low- and moderate-income persons to affordable insurance products;
4. The degree of national uniformity of State insurance regulation, including the identification of, and methods for assessing, excessive, duplicative or outdated insurance regulation or regulatory licensing process;
5. The regulation of insurance companies and affiliates on a consolidated basis;
6. International coordination of insurance regulation;
7. The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance);
8. The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level;
9. The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage;
10. The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance;
11. The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders; and
12. The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority:

i. On the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

ii. On policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

iii. In the case of life insurance companies, on the loss of the special status of separate account assets and separate account liabilities; and

iv. On the international competiveness of insurance companies.

Authority: 31 U.S.C. 313.

Michael T. McRaith,

Director, Federal Insurance Office, Department of Treasury.

[FR Doc. 2011–26776 Filed 10–14–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2011–0024]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1431]

FEDERAL DEPOSIT INSURANCE CORPORATION

[RIN 3064–ZA00]

FARM CREDIT ADMINISTRATION

[RIN 3052–AC46]

NATIONAL CREDIT UNION ADMINISTRATION

[RIN 3133–AD41]

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) are finalizing two new questions and answers, one relating to insurable value and one relating to force placement, and withdrawing one question and answer regarding insurable value. The two final questions and answers supplement the ''Interagency Questions and Answers Regarding Flood Insurance'' (Interagency Questions and Answers), which were published on July 21, 2009 (74 FR 35914). Based on comments received, the Agencies also have significantly revised two questions and answers regarding force placement of flood insurance that were initially proposed on July 21, 2009, and are proposing revision to a previously finalized question and answer. These three revised questions and answers are being proposed for comment.

DATES: *Effective date of final questions and answers:* October 17, 2011. *Comment due date:* Comments on the proposed questions and answers must be submitted on or before December 1, 2011.

ADDRESSES: Although the Agencies will jointly review all the comments submitted, it will facilitate review of the comments if interested parties send comments to the agency that is the appropriate federal regulator for the type of institution addressed in the comments. Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Communications Division, Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2011–0024'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Communications Division, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling in advance (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1431, by any of the following methods:

• *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–ZA00 by any of the following methods:

• *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.

• *E-mail: Comments@fdic.gov.* Include the RIN number in the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

• *Instructions:* All submissions received must include the agency name and RIN number.

• *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 1–877–275–3342 or 703–562–2200.

FCA: There are several methods for you to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act (29 U.S.C. 794d), we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. FCA requests that comments to the proposed amendment include the reference RIN 3052–AC46. You may submit comments by any of the following methods:

• *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*

• *Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''

• *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters'' then ''Public Comments'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

NCUA: You may submit comments by any of the following methods (please send comments by one method only):

• *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for submitting comments.

• *NCUA Web Site: http://www.ncua.gov/RegulationOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Flood Insurance, Interagency Questions & Answers'' in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Pamela Mount, National Bank Examiner, Compliance Policy, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Nikita M. Pastor, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–2412; Lanette J. Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452–2705; or Brad Fleetwood, Senior Counsel, Legal Division, (202) 452–3721, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

FDIC: John Jackwood, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–3991; or Mark Mellon, Counsel, Legal Division, (202) 898–3884, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For the hearing impaired only, telecommunications device for the deaf TDD: 800–925–4618.

FCA: Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4033, TTY (703) 883–4020.

NCUA: Justin M. Anderson, Staff Attorney, Office of General Counsel, (703) 518–6540; or Pamela Yu, Staff Attorney, Office of General Counsel, (703) 518–6593, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, the Office of Thrift Supervision (''OTS''), and NCUA to revise their flood insurance regulations and required the FCA to promulgate a flood insurance regulation for the first time. The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') fulfilled these requirements by issuing a joint final rule in the summer of 1996. *See* 61 FR 45684 (August 29, 1996).[1]

In connection with the 1996 joint rulemaking process, the Agencies received a number of requests to clarify specific issues covering a wide spectrum of the proposed rule's provisions. The Agencies addressed many of these requests in the preamble to the joint final rule. The Agencies concluded, however, that given the number, level of detail, and diversity of the requests, guidance addressing the technical compliance issues would be helpful and appropriate. Consequently, the Agencies decided guidance would be appropriate to address these technical issues subsequent to the promulgation of the final rule (61 FR 45685). The Federal Financial Institutions Examination Council (FFIEC) fulfilled that objective through the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers). 62 FR 39523 (July 23, 1997).

After notice and comment, on July 21, 2009, the Agencies updated the interagency guidance (2009 Interagency Questions and Answers). 74 FR 35914 (July 21, 2009). In this publication, the Agencies also proposed five new questions and answers for comment. *See* 74 FR 35931. The proposed questions and answers addressed issues related to insurable value and force placement of flood insurance.

The Agencies received 28 total comments on the proposed questions and answers. These comments are discussed below.

The Agencies are adopting two of the five questions and answers proposed in the 2009 Interagency Questions and Answers: one question and answer relating to insurable value (question and answer 9) and another question and answer relating to force placement of flood insurance (question and answer 61). The Agencies are also withdrawing one question and answer relating to insurable value and have reserved this question and answer for later use (question and answer 10). However, as discussed below, because the Agencies propose to significantly and substantively change the answers to two of the questions and answers relating to the force placement of flood insurance, the Agencies are proposing them for additional comment (questions and answers 60 and 62). In addition, the Agencies are proposing changes to a previously finalized question and answer (question and answer 57) that also relates to the force placement of flood insurance to be consistent with the proposed changes to these two questions and answers.

The two questions and answers being adopted as final today supplement the 2009 Interagency Questions and Answers and other guidance or interpretations issued by the Agencies and the Federal Emergency Management Agency (FEMA). The Agencies will publish the combined and complete Interagency Questions and Answers in their entirety once the questions and answers that are being proposed for comment are finalized.

For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the Reform Act (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final flood insurance rule.[2]

Final and Withdrawn Questions and Answers

Section II. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation

Insurable value. In general, the questions and answers in Section II explain that, in order to comply with the Regulation, the amount of insurance required is the lesser of the outstanding principal balance of the designated loan or the maximum amount of insurance available under the National Flood Insurance Program (NFIP). The maximum amount of insurance available under the NFIP is the lesser of the maximum limit of coverage available for the particular type of property under the Act or ''the overall value of the property securing the designated loan minus the value of the land on which the property is located.'' Consistent with terminology used by FEMA in its guidance, the Agencies use the term ''insurable value'' to denote the regulatory phrase ''overall value of the property minus the value of the land.'' *See generally* question and answer 8.

The Agencies proposed questions and answers 9 and 10 in an effort to assist lenders in calculating the ''insurable value'' of a property for purposes of determining the required amount of flood insurance under the NFIP. Proposed question and answer 9 referenced FEMA guidelines in providing that the full insurable value of a building is the same as 100 percent replacement cost value (RCV)[3] of the insured building. Proposed question and answer 9 sought to illustrate the flexibility lenders have in determining RCV of a building by providing that lenders (either by themselves or in consultation with the flood insurance provider or other professionals) could consider permissible methods, such as the RCV used in a hazard insurance policy (recognizing that replacement cost for flood insurance will include the foundation), an appraisal based on a cost-value (not market-value) approach before depreciation deductions, and/or a construction cost calculation.

Proposed question and answer 10 provided alternatives to determining the insurable value other than RCV for certain nonresidential buildings used for ranching, farming, and industrial purposes when the borrower either would replace the building with a structure more closely aligned with the

[1] Throughout this document ''the Agencies'' includes the OTS with respect to events that occurred prior to July 21, 2011, but does not include OTS with respect to events thereafter. Sections 311 and 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred OTS's functions to other agencies on July 21, 2011. The OTS's supervisory functions relating to Federal savings associations were transferred to the OCC, while those relating to state savings associations were transferred to the FDIC. See also 76 FR 39246 (Jul. 6, 2011).

[2] The Agencies' rules are codified at 12 CFR part 22 (national banks) and 76 FR 48,950, 49,140 (Aug. 9, 2011) (to be codified at 12 CFR part 172) (Federal savings associations) (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (state nonmember banks) and 76 FR 47,822 (Aug. 5, 2011) (to be codified at 12 CFR part 391 subpart D) (state savings associations) (FDIC), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA). OTS's rules at 12 CFR part 572 will be removed from codification at a later date.

[3] RCV is the cost to replace property with the same kind of material and construction without deduction for depreciation. FEMA, *Mandatory Purchase of Flood Insurance Guidelines,* at GLS 10.

function the building is presently providing or would not replace the building if damaged or destroyed by a flood. In such cases, the alternatives proposed by the Agencies would have allowed the lender to determine the insurable value by either the ''functional building cost value'' or by the demolition/removal cost value.

Comments and Final Question and Answer 9

Although the Agencies received several comments commending the proposed guidance, numerous commenters objected to tying insurable value to RCV in all cases. Commenters stated that it was not possible to obtain RCV in many instances, particularly in cases of nonresidential properties. Commenters also stated that reliance on RCV was inappropriate for nonresidential properties because borrowers would only recover actual cash value [4] in the event of a loss for these types of properties, resulting in the borrower being over-insured.

In response, the Agencies reaffirm that the insurable value for certain residential or condominium properties should be written to RCV. Further, the Agencies recognize that this strict interpretation of insurable value as RCV may not be practical in all cases for nonresidential buildings. Although FEMA's guidance states that insurable value is the same as RCV, it also provides that lenders should avoid creating a situation in which the insured pays for coverage that exceeds the amount the NFIP will pay in the event of a loss.[5] In cases involving certain residential or condominium properties,[6] insurance policies should be written to, and the insurance loss payout would be the equivalent of, RCV. However, in cases involving nonresidential properties, as well as some residential properties, where the insurance loss payout is normally based on actual cash value, insurance policies written at RCV may require an insured to pay for coverage that significantly exceeds the amount the NFIP would pay in the event of a loss. Similarly, in the case of certain nonresidential buildings used for ranching, farming, or industrial purposes that the borrower either would not replace if damaged or destroyed by a flood or would replace with a structure more closely aligned to the function the building is providing at the time of the flood, payouts may be well below RCV. Further, in cases where the physical depreciation of a nonresidential building is very high, the actual cash value payout would likely be very low, causing an even larger gap in the amount of insurance purchased and the potential payout. As a result, requiring flood insurance equal to RCV in such instances may lead to over-insurance for such properties. Lenders, however, need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they under-insure property. In determining the amount of insurance to require, lenders should consider the extent of recovery allowed under the applicable NFIP policy.

Given these practical considerations, the Agencies are adopting question and answer 9 with a revision to provide that, in calculating the required amount of insurance, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish a reasonable valuation. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported. It is important for lenders to recognize that, when calculating the minimum amount of insurance that is required to be purchased, the insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP.

Withdrawn Question and Answer 10

In light of the alternative approaches suggested in final question and answer 9, the Agencies believe the specific exceptions to insurable value in proposed question and answer 10 are no longer necessary. As a result, the Agencies are withdrawing question and answer 10 and that number is reserved for future use.

Section X. Force Placement of Flood Insurance

Section X addressed issues concerning the force placement of flood insurance. The section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers. The Agencies proposed changes to those existing questions and answers in March 2008 designed to provide greater clarity with no intended change in substance and meaning. These revisions were adopted in July 2009. In response to comments received, however, the Agencies proposed three new questions and answers (60, 61, and 62). These proposed questions and answers addressed the following force placement issues: when the 45-day notice period should begin, whether a borrower may be charged for the cost of flood insurance coverage during the 45-day notice period, and how soon after the end of the notice period a lender should purchase a flood insurance policy when the borrower has failed to purchase an appropriate policy.

The Agencies are adopting question and answer 61 as final, with minor nonsubstantive clarifications. However, after consideration of the comments received on questions and answers 60 and 62, the Agencies are revising these proposed questions and answers for further comment. The Agencies are also proposing revisions to question and answer 57 to make it consistent with proposed questions and answers 60 and 62.

Comments and Final Question and Answer 61

The Agencies proposed new question and answer 61 to address questions and concerns about how soon lenders have to force place insurance after the end of the 45-day notice period. The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. Proposed question and answer 61 stated that, given that the lender is already aware during the 45-day notice period that it may be required to force place insurance

[4] ''Actual cash value'' is the cost to replace an insured item of property at the time of loss, less the value of its physical depreciation. FEMA, *Mandatory Purchase of Flood Insurance Guidelines,* at GLS 1.

[5] FEMA, *Mandatory Purchase of Flood Insurance Guidelines,* at 27.

[6] A single-family dwelling, including a single-family unit in a building under a condominium form of ownership, used as the insured's primary residence is covered under the NFIP's Dwelling Policy and, upon loss, payment is settled at RCV if the dwelling is insured for at least the lesser of 80 percent of the dwelling's full RCV or the maximum limit of coverage under the NFIP. Losses on other residential properties are settled at actual cash value. *See* FEMA, *Flood Insurance Manual,* at POL 3–20. Residential condominium buildings are covered under the NFIP's Residential Condominium Building Association Policy (RCBAP). Losses on residential condominium buildings are settled at RCV, unless subject to a co-insurance penalty, which applies when the building coverage is less than the lesser of 80 percent of full RCV or the maximum limit of coverage under the NFIP. *See id.* at POL 43–60.

if there is no response from the borrower, any delay in force placing flood insurance should be brief. Where there is a brief delay in force placing required insurance, the proposed question and answer stated that the Agencies will expect the lender to provide a reasonable explanation for the delay.

The Agencies received comments from six commenters addressing proposed question and answer 61. Two lender commenters explained that batch processing of force placed flood insurance policies may cause a brief delay in the completion of the force placement process. They requested that the Agencies specify in the answer that, if a policy is in effect, for example, five days after the end of the 45-day notice period, then the force placement time frame has been satisfied. The Agencies decline to set an arbitrary number of days after the end of the 45-day notice period as a ''safe harbor'' for completion of the force placement process. The Agencies believe that the lender should have policies and procedures in place to allow force placement generally to commence when the 45-day notice period has expired. However, the Agencies also recognize that the process of force placing flood insurance may not always occur immediately on the 46th day. If there is a brief delay in force placing the required insurance, the lender should be able to provide a reasonable explanation for the delay.

A government-sponsored enterprise (GSE) commenter did not agree with allowing a brief delay, even if the lender could provide a reasonable explanation, noting that flood insurance coverage is required at all times during the term of the mortgage. This commenter also expressed concern over the concept of the 45-day notice period, which results in the unintended consequence that properties may be uninsured or under-insured during the term of the loan. The Agencies are unable to address this overall concern, given that the 45-day notice requirement is found in the Act.

The Agencies are adopting final question and answer 61 with minor nonsubstantive clarifications.

Revised Proposed Questions and Answers

Section X. Force Placement of Flood Insurance

Section X addressed issues concerning the force placement of flood insurance. As noted above, the Agencies have revised and are re-proposing question and answer 60, which addresses when a lender should send the force-placement notice, and question and answer 62, which addresses when a lender may charge a borrower for the cost of flood insurance during the 45-day notice period. The Agencies are also proposing revisions to final question and answer 57 in consideration of the proposed revisions to questions and answers 60 and 62.

Comments and Revised Proposed Question and Answer 60

On July 21, 2009, the Agencies proposed question and answer 60 to address the permissibility of a lender's acceleration of the 45-day notice period for force placement by sending notice to the borrower before the borrower's flood insurance coverage expires. The Act provides that a lender or its servicer must notify a borrower if it determines that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property. The Act further provides that if the borrower fails to purchase flood insurance within 45 days of such notice, the lender or servicer is required to purchase the insurance on behalf of the borrower. *See* 42 U.S.C. 4012a(e)(1) & (2). The proposed answer to question 60 stated that although a lender or servicer could send an advance notice, the Act and Regulation do not allow a lender or its servicer to shorten the 45-day force-placement notice period by sending a notice to the borrower prior to the actual expiration date of the flood insurance policy. The proposed answer also provided that the notice must allow the borrower 45 days in which to obtain flood insurance.

The Agencies received a number of comments on this question and answer. A few commenters generally agreed with the proposed answer to question 60; however, the majority of the commenters viewed the proposed question and answer as thwarting the flood insurance program's primary purpose of ensuring continuous flood insurance coverage during the life of the loan.

Some commenters asserted that the proposed question and answer contradicted the NFIP Flood Insurance Manual, which requires flood insurance protection for the life of the loan and states that renewal/expiration letters should be sent not less than 45 days before policy expiration. However, that discussion referenced in the manual pertains to the renewal notice that is sent by an *insurance company* to policyholders, reminding them that their flood insurance coverage is about to lapse. As such, it has no application to the question and answer, which pertains to the notice that a lender or its servicer is required to send to borrowers once the lender or its servicer has made a determination that flood insurance coverage has either lapsed or is inadequate.

The Agencies agree with the commenters that the purpose of the notice process is to ensure that there is continuous flood insurance coverage during the life of the loan. In considering these comments to proposed question and answer 60, the Agencies have sought to reconcile the statute's requirement that a lender send the borrower notice of inadequate or lapsed flood insurance with the purpose of the statute to facilitate a lender or servicer's ability to ensure continuous flood insurance coverage. The Agencies are, therefore, proposing revisions to question and answer 60 to clarify when a lender is required to send a force placement notice to the borrower to ensure adequate flood insurance coverage is maintained throughout the term of the loan. The revisions to the question and answer are further made in recognition of the position, set out in the revisions to proposed question and answer 62 *infra,* that lenders may force place flood insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance is in effect and charge the borrower for the costs of such coverage, if the borrower has given the lender express authority as a contractual condition of the loan being made.

The text of the revised proposed question and answer is as follows:

►*60. When should a lender send the force placement notice to the borrower?*

Answer: To ensure that adequate flood insurance coverage is maintained throughout the term of the loan, a lender or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the amount required for the property. The lender must send this notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. Notice is also required when a lender learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change (which is occurring in many communities as a result of FEMA's map modernization program). To avoid the expiration of insurance, the Agencies recommend that the lender also advise the borrower when flood insurance on the collateral is about to expire.◄

Comments on Revised Proposed Question and Answer 62

On July 21, 2009, the Agencies proposed question and answer 62 to address whether a borrower may ever be charged for the cost of flood insurance that provides coverage for the 45-day force-placement notice period. The Agencies received comments from 19 commenters regarding the proposed question and answer. Of these, a majority disagreed with the proposition that a lender or servicer has no authority to charge a borrower for coverage that applies to the notice period. One commenter favored the question and answer, but noted that gaps in coverage and costly administration of the notice requirements would be eliminated if lenders escrowed flood insurance premiums, even though not legally required to do so. Another commenter had no objection to the proposed question and answer.

Several commenters reasoned that the Act intended to establish a goal of continuous coverage throughout the life of a mortgage loan. These commenters contended that question and answer 62 would undercut this primary goal if finalized as proposed.

Commenters also contended that a borrower must maintain flood insurance at the borrower's expense throughout the life of the loan. They argued that it is in the borrower's best interest if flood insurance coverage on the collateral is purchased by the lender during the 45-day notice period after a policy lapses if a borrower has not renewed the policy or otherwise purchased insurance. A commenter contended that it is fair and equitable that borrowers should pay for continuous coverage. Some commenters also noted that the Act expressly allows a lender to charge a borrower for the cost of premiums and fees incurred in purchasing insurance. One commenter argued it would further safety and soundness principles to allow a lender or a servicer to charge a borrower for the cost of flood insurance during the notice period because, otherwise, the lender may not purchase such coverage if it could not recoup its cost. Another commenter did not address the proposed question and answer directly, but did argue for continuous flood insurance coverage throughout the life of a mortgage, including the notice period, citing potential significant financial risk to a borrower during that time.

Some commenters acknowledged that the Act does not specifically authorize a lender or a servicer to charge a borrower for a force-placed policy until the notice period has expired. However, these commenters contended that, absent a specific prohibition on charging borrowers for coverage for the 45-day notice period, lenders should be permitted to charge borrowers for such coverage.

Several commenters contended that most loan agreements generally prohibit any gap in flood insurance coverage and authorize a lender to force place insurance on the collateral if the borrower fails to maintain coverage. One commenter advised that the proposed question and answer would interfere with the borrower-lender contractual relationship and also with the purpose of the Act by prohibiting lenders from relying on the authority granted in their loan documents to force place flood coverage.

One commenter noted that a policy force-placed through the NFIP is not available until the expiration of the notice period; others contended that private insurers offer force-placed coverage effective retroactively to the date of the lapse to avoid any uninsured loss. With respect to coverage during the notice period, one commenter noted that, if retroactive coverage to the date of lapse is not permitted for a force-placed private insurance policy, the lender (and the borrower) will be exposed to loss. Several commenters noted that the lender would be exposed to at least a 15-day lapse in coverage under an NFIP policy because the lender's coverage continues for only 30 days after lapse, not 45.

Several commenters maintained that proposed question and answer 62 could harm borrowers. Commenters argued that a borrower would not have to pay for duplicate coverage under most force-placed policies. They contended that an insurer would waive or refund the premiums for force-placed insurance if the borrower establishes that coverage is already in place or was obtained during the notice period. Several commenters even argued that the proposed question and answer might encourage a ''free-rider situation'' in which borrowers may delay renewal or even cancel policies since they cannot be charged during the notice period.

A few commenters argued that proposed question and answer 62 could lead to increased losses for the NFIP since lenders would submit more claims under the mortgagee clauses of the NFIP policy for losses that occur during the notice period instead of submitting them to a private force-placed policy. The same commenters maintained that smaller lenders may not be able to afford the cost of blanket or force-placed policies and will allow collateral to remain uninsured for the gap period, contrary to safety and soundness principles.

In consideration of the comments received, the Agencies are revising proposed question and answer 62. As a general rule, the revised proposed question and answer would allow a lender or its servicer to charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect *if* the borrower has given the lender or its servicer the express authority to charge the borrower for such coverage as a contractual condition of the loan being made. Any policy that is obtained by a lender or its servicer, the premium of which is charged to the borrower pursuant to a contractual right, should be equivalent in coverage and exclusions to an NFIP policy and cover the interests of both the borrower and the lender.

In the proposed question and answer, the Agencies also encourage institutions to explain their force-placement policies to borrowers (including their policy on charging for force-placement coverage for the 45-day period and the timing of that charge) and encourage lenders and servicers to escrow flood insurance premiums. Following these recommendations could result in significantly less force placement of flood insurance. The Agencies also note in the proposed question and answer that Regulation Z requires lenders to establish an escrow account for the payment of property taxes and mortgage-related insurance required by the lender, including flood insurance, for all ''higher priced'' first-lien mortgage loans. *See* 12 CFR 226.35(b)(3).[7]

The text of the revised proposed question and answer follows:

►*62. When may a lender or its servicer charge a borrower for the cost of insurance that covers collateral during the 45-day notice period?*

Answer: A lender or its servicer may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect, if the borrower has given the lender or its servicer the express authority to charge the borrower for such coverage as a contractual condition of the loan being made. Any policy that is obtained by a lender or its servicer, the premium of which is

[7] Institutions should note that upcoming rules to implement section 1461 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) (Dodd-Frank Act), may affect the portion of the answer referencing mandatory escrow requirements for flood insurance.

charged to the borrower pursuant to a contractual right, should be equivalent in coverage and exclusions to an NFIP policy and cover the interests of both the borrower and the lender.

The Agencies encourage institutions to explain their force-placement policies to borrowers (including their policy on charging for force-placement coverage for the 45-day period and the timing of that charge) and encourage lenders and servicers to escrow flood insurance premiums. Following these recommendations could result in less force placement of flood insurance. Further, Regulation Z requires lenders to establish an escrow account for the payment of property taxes and mortgage-related insurance required by the lender, including flood insurance, for all ''higher priced'' first-lien mortgage loans. *See* 12 CFR 226.35(b)(3).◄

Revised Proposed Question and Answer 57

Proposed question and answer 57 provides general guidance on force placement under the Act and Regulation. The Agencies are proposing revisions to previously finalized question and answer 57 as a result of the proposed revisions to questions and answers 60 and 62. The proposed revisions to question and answer 57 clarify when a lender is required to send a force-placement notice to the borrower to ensure adequate flood insurance coverage is maintained throughout the term of the loan. The proposed revisions also clarify best practices that lenders should follow in providing borrowers with useful information in the force-placement notice to assist them in understanding the high costs of premiums and fees in connection with force-placed insurance coverage. The revised question and answer also encourages lenders, in situations where a borrower has not previously been required to have flood insurance (such as a map change), to send borrowers the Notice of Special Flood Hazards and Availability of Federal Disaster Assistance with the force-placement notice to give borrowers important information about the implications of being in a SFHA.

The text of the revised proposed question and answer is as follows:

►57. *What is the requirement for the force placement of flood insurance under the Act and Regulation?*

Answer: The Act and Regulation require a lender to force place flood insurance, if *all* of the following circumstances occur:

- The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;
- Flood insurance under the Act is available for improved property securing the loan;
- The lender determines that flood insurance coverage is inadequate or does not exist; and
- After required notice, the borrower fails to purchase the appropriate amount of coverage within 45 days.

The Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider. The Act and Regulation also require the lender, or its servicer, to give notice and force-place such insurance, if necessary, when a lender learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change (which is occurring in many communities as a result of FEMA's map modernization program).

The notice to the borrower must clearly state that the borrower should obtain, at the borrower's expense, flood insurance in an amount at least equal to the amount required under the NFIP, for the remainder of the loan's term. The notice should also state that if the borrower does not obtain the insurance within 45 days, the lender will purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees to obtain the coverage, which are likely to be more expensive than if the borrower purchases it. The Agencies encourage institutions to explain their force-placement policies to borrowers (including, where applicable, that they charge for force-placement coverage for the 45-day period and the timing of that charge). In situations where a borrower has not previously been required to have flood insurance (such as a map change), it is a best practice to also provide the Notice of Special Flood Hazards and Availability of Federal Disaster Assistance, which give borrowers important information about the implications of being in an SFHA.

If adequate insurance is not obtained by the borrower within the 45-day notice period, then the lender must purchase insurance on the borrower's behalf. Standard Fannie Mae/Freddie Mac documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with force-placement procedures. FEMA published these procedures in the **Federal Register** on August 29, 1995 (60 FR 44881). Appendix A of FEMA's September 2007 *Mandatory Purchase of Flood Insurance Guidelines* sets out the MPPP Guidelines and Requirements, including force-placement procedures and examples of notification letters to be used in connection with the MPPP. ◄

Public Comments

The Agencies invite specific public comment on proposed questions and answers 57, 60, and 62 and are particularly interested in comments regarding proposed question and answer 62. With regard to proposed question and answer 62, the Agencies note that question and answer 62 being proposed today reaches a conclusion that is significantly different from the guidance proposed in July 2009. In the July 2009 proposed guidance, proposed question and answer 62 stated that a lender or its servicer does not have the authority to charge a borrower for the cost of insurance coverage during the 45-day notice period. However, in recognition of standard provisions in many contracts entered into between borrowers and lenders at loan origination, the Agencies are now proposing guidance allowing lenders, or servicers acting on behalf of lenders, to charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect if the borrower has given the lender or its servicer the express authority to charge the borrower for such coverage as a contractual condition of the loan being made.

The Agencies are concerned that borrowers are not adequately aware of the higher costs of lender-placed flood insurance. In addition, the Agencies are concerned that borrowers may not be aware that lender force placement may occur during the 45-day notice period and that the borrower could be charged for such coverage. The Agencies invite comment on how to address these concerns and on whether they should adopt question and answer 62 as proposed. The Agencies also seek comment on whether there are alternative approaches that would appropriately balance the borrower's right to obtain flood insurance at any time during the 45-day period after notification and avoid force placement with the lender's need to protect itself during that period and to be compensated for lender-purchased insurance.

The Agencies note that an NFIP flood insurance policy provides coverage for the mortgagee for 30 days after lapse. Proposed question and answer 62 does not directly address whether a lender may charge the borrower for coverage during the 30 days after lapse of the borrower-purchased NFIP policy, during which time the policy is still in effect, other than stating that the lender may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect. The Agencies also seek comment on whether any final question and answer on this issue should provide that lenders may not charge for additional overlapping lender-placed coverage during that 30-day period.

Finally, the Agencies note that there are a number of recent developments relating to force-placed insurance on consumer mortgages. For example, Congress recently set forth notice and force-placement requirements for hazard insurance in section 1463 of the Dodd-Frank Act, which amends the Real Estate Settlement Procedures Act of 1974. While section 1463 is still awaiting regulatory implementation, the statutory language provides that a servicer of a federally related mortgage may not impose any charge on any borrower for force-placed hazard insurance unless the servicer has sent the borrower two separate notices within a 45-day period and has not received confirmation from the borrower that such insurance has been obtained during that period. The Agencies note that section 1463 of the Dodd-Frank Act does not cover the force placement of flood insurance. Force-placement of insurance also has been raised as a significant concern in connection with recent foreclosure activity. The Agencies will continue to monitor developments in this area to the extent that they can inform agencies' supervisory policy with regard to the Act rules.

If financial institutions, bank examiners, community groups, or other interested parties have unanswered questions or comments about the Agencies' flood insurance regulation, they should submit them to the Agencies. The Agencies will consider addressing these questions in future guidance.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm—Leach—Bliley Act of 1999, 12 U.S.C. 4809, requires the federal banking Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this document is not a proposed rule, comments are nevertheless invited on whether the proposed questions and answers are stated clearly and how they might be revised to be easier to read.

The text of the new final Questions and Answers follows:

Interagency Questions and Answers Regarding Flood Insurance

* * * * *

II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

* * * * *

9. *What is the ''insurable value'' of a building?*

Answer: The insurable value of a building is the same as the overall value of a property minus the land on which the property is located. FEMA's *Mandatory Purchase of Flood Insurance Guidelines* state that the insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building, which is defined as ''[t]he cost to replace property with the same kind of material and construction without deduction for depreciation.'' [8] FEMA's guidelines, however, also provide that lenders should avoid creating a situation in which the insured pays for more coverage than the NFIP would pay in the event of a loss.[9] Strictly linking insurable value to RCV is not practical in all cases. In cases involving certain residential or condominium properties, insurance policies should be written to, and the insurance loss payout usually would be the equivalent of, RCV.[10] However, in cases involving nonresidential properties, and even some residential properties, where the insurance loss payout would normally be based on actual cash value, which is RCV less physical depreciation,[11] insurance policies written at RCV may require an insured to pay for coverage that exceeds the amount the NFIP would pay in the event of a loss. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP policy for the type of property being insured. This allows the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

10. *[Reserved]*

Answer: [Reserved]

* * * * *

X. Force Placement of Flood Insurance

* * * * *

57. *What is the requirement for the force placement of flood insurance under the Act and Regulation?*

Answer: [Reserved]

60. *When should a lender send the force-placement notice to the borrower?*

Answer: [Reserved]

61. *When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within the 45-day notice period?*

Answer: The Regulation provides that the lender or its servicer *shall* purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay, for example, where a lender uses batch processing to purchase force-placed flood insurance policies.

62. *When may a lender or its servicer charge a borrower for the cost of insurance that covers collateral during the 45-day notice period?*

Answer: [Reserved]

* * * * *

End of text of the new final Questions and Answers.

Dated: June 28, 2011.

John Walsh,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 30, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC this 11th day of October, 2011.

[8] FEMA, *Mandatory Purchase of Flood Insurance Guidelines,* at GLS 10.

[9] FEMA, *Mandatory Purchase of Flood Insurance Guidelines,* at 27.

[10] A single-family dwelling, including a single-family unit in a building under a condominium form of ownership, used as the insured's primary residence is covered under the NFIP's Dwelling Policy and, upon loss, payment is settled at RCV if the dwelling is insured for at least the lesser of 80 percent of the dwelling's full RCV or the maximum limit of coverage under the NFIP. Losses on other residential properties are settled at actual cash value. *See* FEMA, *Flood Insurance Manual,* at POL 3–20. Residential condominium buildings are covered under the NFIP's Residential Condominium Building Association Policy (RCBAP). Losses on residential condominium buildings are settled at RCV, unless subject to a co-insurance penalty, which applies when the building coverage is less than the lesser of 80 percent of full RCV or the maximum limit of coverage under the NFIP. *See id.* at POL 43–60.

[11] FEMA, *Mandatory Purchase of Flood Insurance Guidelines,* at GLS 1.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: October 5, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

By the National Credit Union Administration Board, on October 3, 2011.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2011–26749 Filed 10–14–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6705–01–P; 7535–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Five Individuals Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the five individuals in this notice, pursuant to Executive Order 13224, are effective on October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On October 11, 2011, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, five individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for the five individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

ABDOLLAHI, Hamed (a.k.a. ABDULLAHI, Mustafa); DOB 11 Aug 1960; citizen Iran; Passport D9004878 (individual) [SDGT] [IRGC].

ARBABSIAR, Manssor (a.k.a. ARBABSIAR, Mansour), 805 Cisco Valley CV, Round Rock, TX 78664; 5403 Everhardt Road, Corpus Christi, TX 78411; DOB 15 Mar 1955; alt. DOB 6 Mar 1955; POB Iran; citizen United States; Driver's License No. 07442833 (United States) expires 15 Mar 2016; Passport C2002515 (Iran); alt. Passport 477845448 (United States); Driver's License is issued by the State of Texas (individual) [SDGT] [IRGC].

SHAHLAI, Abdul Reza (a.k.a. SHAHLAEE, Abdul-Reza; a.k.a. SHAHLAI, Abdol Reza; a.k.a. SHAHLA'I, Abdolreza; a.k.a. SHAHLAI, 'Abdorreza; a.k.a. SHALAI, 'Abd-al Reza; a.k.a. SHALA'I, Abdul Reza; a.k.a. ''ABU–AL–KARKH', 'Yusuf''; a.k.a. ''YASIR, Hajji''; a.k.a. ''YUSEF, Hajj''; a.k.a. ''YUSIF, Haji''; a.k.a. ''YUSIF, Hajji''), Kermanshah, Iran; Mehran Military Base, Ilam Province, Iran; DOB circa 1957 (individual) [SDGT] [IRAQ3] [IRGC].

SHAKURI, Gholam, Tehran, Iran; DOB 1964; alt. DOB 1965; alt. DOB 1966 (individual) [SDGT] [IRGC].

SOLEIMANI, Qasem (a.k.a. SALIMANI, Qasem; a.k.a. SOLAIMANI, Qasem; a.k.a. SOLEMANI, Qasem; a.k.a. SOLEYMANI, Ghasem; a.k.a. SOLEYMANI, Qasem; a.k.a. SULAIMANI, Qasem; a.k.a. SULAYMAN, Qasim; a.k.a. SULEMANI, Qasem); DOB 11 Mar 1957; POB Qom, Iran; citizen Iran; nationality Iran; Diplomatic Passport 008827 (Iran) issued 1999 (individual) [SDGT] [SYRIA] [NPWMD] [IRGC].

Dated: October 11, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–26775 Filed 10–14–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet October 25–27, 2011, in room 930 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 until 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include updates on recommendations from the 2010 report; overviews of the Veterans Health Administration, the Veterans Benefits Administration, and the Women Veterans Health Strategic Health Care Group; and briefings on mental health, women Veterans' legislative issues, women Veterans' research, rural health, and homeless initiatives for women Veterans.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton, Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *00W@mail.va.gov,* or fax to (202) 273–7092. Individuals who wish to attend the meeting or want additional information should contact Ms. Middleton at (202) 461–6193.

Dated: October 12, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–26754 Filed 10–14–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arkansas; Regional Haze State Implementation Plan; Interstate Transport State Implementation Plan To Address Pollution Affecting Visibility and Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0727; FRL–9478–2]

Approval and Promulgation of Implementation Plans; Arkansas; Regional Haze State Implementation Plan; Interstate Transport State Implementation Plan To Address Pollution Affecting Visibility and Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a revision to the Arkansas State Implementation Plan (SIP) submitted by the State of Arkansas through the Arkansas Department of Environmental Quality (ADEQ) on September 23, 2008, August 3, 2010, and supplemented on September 27, 2011, that addresses regional haze (RH) for the first implementation period. These revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). EPA is also proposing to partially approve and partially disapprove a portion of a SIP revision submitted by the State of Arkansas on April 2, 2008, and supplemented on September 27, 2011, to address the interstate transport requirements of the CAA that the Arkansas SIP contain adequate provisions to prohibit emissions from interfering with measures required in another state to protect visibility. This action is being taken under section 110 and part C of the CAA.

DATES: Comments must be received on or before November 16, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0727, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2008–0727. Our 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 we 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 us 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, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at our Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118–5317.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7241; fax number 214–665–7263; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Overview of Proposed Actions

A. Regional Haze

We are proposing to partially approve and partially disapprove Arkansas' RH SIP revision submitted on September 23, 2008, August 3, 2010, and supplemented on September 27, 2011, as discussed in sections IV and VI of this proposed rulemaking. Specifically, we are proposing to approve the following: the State's identification of affected Class I areas; the establishment of baseline and natural visibility conditions; the Uniform Rate of Progress (URP); the State's reasonable progress goal (RPG) consultation and the long-term strategy (LTS) consultation; the regional haze monitoring strategy and other SIP requirements under section 51.308(d)(4); the State's commitment to submit periodic regional haze SIP revisions and periodic progress reports describing progress towards the RPGs; the State's commitment to make a determination of the adequacy of the existing SIP at the time a progress report is submitted; and the State's consultation and coordination with Federal land managers (FLMs).

We are proposing to partially approve and partially disapprove those portions addressing the State's identification of BART-eligible sources and subject to BART sources; the requirements for best available retrofit technology (BART); the State's RH Rule; and the LTS. Specifically, we are proposing to approve the State's identification of BART-eligible sources, with the exception of the 6A Boiler at the Georgia-Pacific Crossett Mill, which we find to be BART-eligible. We are proposing to approve the State's identification of subject to BART sources, with the exception of the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill, which we find to be subject to BART. We are also proposing to approve the following BART determinations made by ADEQ: The PM BART determination for the No. 1 Boiler of the American Electric Power (AEP) Flint Creek plant; the SO_2 and PM BART determinations for the natural gas firing scenario for Unit 4 of the Entergy Lake Catherine plant; the PM BART determinations for both the bituminous and sub-bituminous coal firing scenarios for Units 1 and 2 of the Entergy White Bluff plant; and the PM BART determination for the No. 1 Power Boiler of the Domtar Ashdown Mill. We are proposing to disapprove the following BART determinations made by ADEQ: The SO_2, NO_X, and PM BART determinations for both Unit 1 of the Arkansas Electric Cooperative Corporation (AECC) Bailey plant and Unit 1 of the AECC McClellan plant; the SO_2 and NO_X BART determinations for the No. 1 Boiler of the AEP Flint Creek plant; the NO_X BART determination for the natural gas firing scenario and the SO_2, NO_X, and PM BART determinations for the fuel oil firing scenario for Unit 4 of the Entergy Lake Catherine plant; the SO_2 and NO_X BART determinations for both the bituminous and sub-bituminous coal firing scenarios for Units 1 and 2 of the Entergy White Bluff plant; the BART determination for the Auxiliary Boiler of the Entergy White Bluff Plant; the SO_2 and NO_X BART determinations for the No. 1 Power Boiler of the Domtar Ashdown Mill; and the SO_2, NO_X and PM BART determinations for the No. 2 Power Boiler of the Domtar Ashdown Mill. We are proposing to disapprove these BART determinations because they do not comply with our regulations under 40 CFR 51.308(e). The Arkansas RH Rule, the Arkansas Pollution Control and Ecology Commission (APC&E Commission) Regulation 19, Chapter 15, was submitted by ADEQ on September 23, 2008, as part of the RH SIP. On August 3, 2010, we received a SIP submittal from ADEQ revising several chapters of APC&E Commission Regulation 19, including chapter 15. The revisions to Chapter 15 of APC&E Commission Regulation 19 that we received on August 3, 2010, are mostly non-substantive edits to the original rule we received on September 23, 2008. Therefore, in this proposed rulemaking we are proposing to take action on chapter 15 of APC&E Regulation 19 contained in the submittal we received on September 23, 2008, and as revised by the submittal we received on August 3, 2010. We are proposing to approve the portions of APC&E Commission Regulation 19, chapter 15, which we received on September 23, 2008, and as revised on August 3, 2010, that are consistent with the portions of the Arkansas RH SIP we are proposing to approve and we are proposing to disapprove the portions that are consistent with other portions of the Arkansas RH SIP we are proposing to disapprove. We are proposing to partially approve and partially disapprove the State's LTS because the LTS only partially satisfies the requirements under section 51.308(d)(3), and a portion of it relies on portions of the RH SIP we are proposing to disapprove.

We are proposing to disapprove the reasonable progress goals (RPGs) under section 51.308(d)(1) because Arkansas did not consider the factors that states are required to consider in establishing RPGs under the CAA and section 51.308(d)(1)(A).

Under the CAA,[1] we must, within 24 months following a final disapproval, either approve a SIP or promulgate a Federal Implementation Plan (FIP). At this time, we are not proposing a FIP for the portions of the Arkansas RH SIP we are proposing to disapprove because ADEQ has expressed its intent to revise the Arkansas RH SIP by correcting the deficiencies we have identified in this proposal. We are electing to not propose a FIP at this time in order to provide Arkansas time to correct these deficiencies.

B. Interstate Transport and Visibility

We are proposing to partially approve and partially disapprove a portion of the SIP revision we received from the State of Arkansas on April 2, 2008, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. Section 110(a)(2)(D)(i)(II) of the Act requires that states have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts whichwill * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' Because of the impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states, or a demonstration that emissions from Arkansas sources and activities will not have the prohibited impacts on other states' existing SIPs.

Arkansas stated in its April 2, 2008 submittal that it is relying on the Arkansas RH Rule, the APC&E Commission Regulation 19, Chapter 15, to satisfy the requirements of section 110(a)(2)(D)(i)(II) that emissions from Arkansas sources not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. ADEQ also stated in its April 2, 2008 submittal that it is not possible to assess whether there is any interference with the measures in the applicable SIP for another state designed to protect visibility for the 8-hour ozone and $PM_{2.5}$ NAAQS until ADEQ submits and EPA approves Arkansas' RH SIP.

In developing their Regional Haze SIP and RPGs, Arkansas and potentially impacted States collaborated through the Central Regional Air Planning (CENRAP) association. Each State developed its Regional Haze Plans and RPGs based on the CENRAP modeling. The CENRAP modeling was based in part on the emissions reductions each state intended to achieve by 2018. In the case of Arkansas, some of the emissions reductions included in the modeling, and thus relied upon by other States, were from BART controls on Arkansas subject to BART sources. In the State's September 27, 2011 supplemental submission, ADEQ clarified that the base year modeling inventory used by CENRAP in the 2002 base case modeling was prepared by the CENRAP Modeling Workgroup and its consultants, and was derived primarily from the 2002 National Emissions Inventory (NEI). ADEQ also clarified that it provided the CENRAP Modeling Workgroup with the controlled BART source emission limits contained in the State's RH Rule, the APC&E Commission Regulation 19, Chapter 15, for inclusion in the CENRAP's 2018 future case modeling. The State's RH Rule became effective October 15, 2007, and incorporates BART requirements for Arkansas' subject to BART sources. The current language of the regulation requires Arkansas' subject to BART sources to comply with BART requirements no later than five years after EPA approval of the RH SIP or 6 years after the effective date of the regulation, whichever is first. However, on March 26, 2010, the Arkansas Pollution Control and Ecology Commission, the environmental policy-making body for Arkansas, granted all Arkansas subject to BART sources a variance from the compliance deadline imposed by the State's RH Rule, such that these sources are now required to comply with BART requirements no later than 5 years after EPA approval of the RH SIP. Compliance with these BART requirements will ensure that Arkansas obtains its share of the emission reductions relied upon by other states to meet the RPGs for their Class I areas. Since compliance of Arkansas' subject to BART sources with BART requirements is dependent upon our approval of the RH SIP, and since we are proposing to disapprove the portion of the RH SIP which includes some of Arkansas' BART determinations, a portion of the emission reductions committed to by Arkansas and relied upon by other states will not be realized and, as a consequence, Arkansas' emissions will interfere with other states' SIPs to protect visibility. Therefore, we are proposing to partially approve and partially disapprove the portion of the Arkansas Interstate Transport SIP submittal that addresses the visibility requirement of section 110(a)(2)(D)(i)(II) that emissions from Arkansas sources not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility.

II. What is the background for our proposed actions?

A. Regional Haze

RH is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* SO_2, nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$ (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ also can cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range[2] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. 64 FR 35714, 35715 (July 1, 1999). In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range

[1] CAA section 110(c)(1).

[2] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

that would exist under estimated natural conditions. *Id.*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [3] which impairment results from man-made air pollution.'' CAA § 169A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. *Id.* section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on RH that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment improved.

Congress added section 169B to the CAA in 1990 to address RH issues, and we promulgated regulations addressing RH in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The Regional Haze Rule (RHR) revised the existing visibility regulations to integrate into the regulations provisions addressing RH impairment and established a comprehensive visibility protection program for Class I areas. The requirements for RH, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the RH requirements are summarized in section III. The requirement to submit a RH SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[4] States were required to submit the first implementation plan addressing RH visibility impairment no later than December 17, 2007. 40 CFR 51.308(b). We received the Arkansas RH SIP on September 23, 2008.

B. Roles of Agencies in Addressing Regional Haze

Successful implementation of the RH program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to address effectively the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to RH can originate from sources located across broad geographic areas, we have encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address RH and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to RH.

The CENRAP is an organization of states, tribes, federal agencies and other interested parties that identifies RH and visibility issues and develops strategies to address them. CENRAP is one of the five RPOs across the U.S. and includes the states and tribal areas of Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana.

C. The 1997 NAAQS for Ozone and $PM_{2.5}$ and CAA 110(a)(2)(D)(i)

On July 18, 1997, we promulgated new NAAQS for 8-hour ozone and for $PM_{2.5}$. 62 FR 38652. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. Section 110(a)(2) of the CAA lists the elements that such new SIPs must address, including section 110(a)(2)(D)(i), which pertains to the interstate transport of certain emissions. Thus, states were required to submit SIPs that satisfy the applicable requirements under sections 110(a)(1) and (2), including the requirements of section 110(a)(2)(D)(i), by July 2000. States, including Arkansas, did not meet the statutory July 2000 deadline for submission of these SIPs. Accordingly, on April 25, 2005, EPA made findings of failure to submit, notifying all states, including Arkansas, of their failure to make the required SIP submission to address interstate transport under section 110(a)(2)(D)(i). 70 FR 21147. This finding started a 24-month FIP clock under section 110(c). Pursuant to section 110(c), we are required to promulgate a FIP to address the applicable interstate transport requirements, unless the State makes the required submission and we fully approve such submission, within the 24-month period.

On August 15, 2006, we issued our ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2006 Guidance). We developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) of the CAA require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states. In this action, we only address the fourth element regarding visibility.

The 2006 Guidance stated that states may make a simple SIP submission confirming that it is not possible at that time to assess whether there is any

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122, November 30, 1979. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). *See* CAA section 302(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[4] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

interference with measures in the applicable SIP for another state designed to ''protect visibility'' for the 8-hour ozone and $PM_{2.5}$ NAAQS until RH SIPs are submitted and approved. RH SIPs were required to be submitted by December 17, 2007. *See* 74 FR 2392 (January 15, 2009).

On April 2, 2008, we received a SIP revision from Arkansas to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 ozone and $PM_{2.5}$ NAAQS. For the reasons discussed in section V of this proposed rulemaking, a portion of the emission reductions committed to by Arkansas and relied upon by other states will not be realized and Arkansas' emissions will interfere with other states' SIPs to protect visibility. Therefore, we are proposing to partially approve and partially disapprove the portion of the Arkansas Interstate Transport SIP submittal that addresses the requirement that emissions from Arkansas sources not interfere with measures required in the SIP of any other state to protect visibility. *See* CAA section 110(a)(2)(D)(i)(II).

We recognize that we have an outstanding obligation to promulgate a FIP for the portion of the Arkansas Interstate Transport SIP submittal we are proposing to disapprove. However, because we are not proposing a FIP for the portions of the Arkansas RH SIP we are proposing to disapprove at this time in order to provide Arkansas time to correct the deficiencies identified in this proposal, we are likewise not proposing a FIP at this time for the disapproved portion of the Arkansas Interstate Transport SIP. We believe it is appropriate to address the concerns with the Regional Haze SIP and the Interstate Transport SIP at the same time and it is appropriate, in this instance, to allow the state an opportunity to address the deficiencies we have identified in this proposed action before imposing a FIP. If we were to propose a FIP for the disapproved portion of the Arkansas Interstate Transport SIP without also proposing a FIP for the disapproved portions of the Arkansas RH SIP, this could potentially result in Arkansas' subject to BART sources being required to install two successive levels of control measures, the first in order to meet the requirements of section 110(a)(2)(D)(i), and the second in order to meet the requirements of the RH program. This would result in an inefficient use of resources by both the affected sources and us.

III. What are the requirements for regional haze SIPs?

The following is a summary and basic explanation of the regulations covered under the RHR. See 40 CFR 51.308 for a complete listing of the regulations under which this SIP was evaluated.

A. The CAA and the Regional Haze Rule

RH SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific RH SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. *See* 70 FR 39104. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range, which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[5]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The RH SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by man-made air pollution by reducing anthropogenic emissions that cause RH. The national goal is a return to natural conditions, *i.e.,* man-made sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each RH SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[6]

For the first RH SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

[5] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[6] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf,* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (EPA–454/B–03–004, September 2003, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

C. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of RH SIPs from the states that establish two RPGs (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See* 70 FR 3915; *see also* 64 FR 35714. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in our RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in our Reasonable Progress Guidance [7]. In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the ''Uniform Rate of Progress (URP)'' and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment at the Class I State's areas. 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources with the potential to emit greater than 250 tons or more of any pollutant in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the Act requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [8] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' (BART), as determined by the state or us in the case of a plan promulgated under section 110(c) of the CAA. Under the RHR, States are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

We promulgated regulations addressing RH in 1999, 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.[9] These regulations require all states to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e).

On July 6, 2005, we published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

The process of establishing BART emission limitations can be logically broken down into three steps: first, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301 [10]; second, states determine whether such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART,'') and; third, for each source subject to BART, states then identify the appropriate type and the level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. We have stated that states should use their best judgment in determining whether VOC or ammonia compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 dv. See also 40 CFR part 51, Appendix Y, section III.A.1.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. The term ''BART-eligible source'' used in the

[7] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp.4–2, 5–1).

[8] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

[9] In *American Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002), the U.S Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2005, we issued BART guidelines to address the court's ruling in that case. *See* 70 FR 39104 (July 6, 2005).

[10] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. *See* 40 CFR 51.308(e)(1)(ii).

A RH SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of our approval of the RH SIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a). As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, Section 51.308(d)(3) of the RHR requires that states include a LTS in their RH SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). Also, a state with a Class I area impacted by emissions from another state must consult with such contributing state, (*id.*) and must also demonstrate that it has included in its SIP all measures necessary to obtain its share of emission reductions needed to meet the reasonable progress goals for the Class I area. *Id.* at (d)(3)(ii). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment

As part of the RHR, we revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing RH visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and RH, and the state must submit the first such coordinated LTS with its first RH SIP. Future coordinated LTS and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both RH and RAVI impairment and must be submitted to us as a SIP revision.

G. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of RH visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first RH SIP, and it must be reviewed every five (5) years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to RH visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to RH visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and

• Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first RH SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers

The RHR requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. Our Analysis of Arkansas' Regional Haze SIP

On September 23, 2008, we received a RH SIP revision from the State of Arkansas for approval into the Arkansas SIP. We received a supplemental submission to the RH SIP revision on September 27, 2011. In addition, we received a submittal revising several chapters of APC&E Commission Regulation 19, including Chapter 15 (Arkansas' RH Rule), on August 3, 2010. In this proposed rulemaking, the only portions of the August 3, 2010, submittal we are proposing to take action on are those addressing Chapter 15 of APC&E Commission Regulation 19. The following is a discussion of our evaluation of these submissions. The parts of the submittals that are interrelated are discussed together, in order to provide the reader with a more ready understanding of our evaluation. See the Technical Support Document (TSD) for this proposal for a step-wise evaluation of ADEQ's submissions in the order in which the regulations appear in 40 CFR 51.308, and a more comprehensive technical analysis.[11]

A. Affected Class I Areas

In accordance with 40 CFR 51.308(d), ADEQ has identified two Class I areas within its borders, the Caney Creek Wilderness Area (Caney Creek) in Ouachita National Forest and the Upper Buffalo Wilderness Area (Upper Buffalo) in the Ozark National Forest. ADEQ is responsible for developing RPGs for these two Class I areas. ADEQ has also determined that Arkansas emissions cause and contribute to visibility impairment at the two Class I areas in Missouri: Hercules Glades Wilderness Area (Hercules Glades) and Mingo National Wildlife Refuge (Mingo). The TSD for the CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation (TSD for CENRAP modeling) demonstrates Arkansas sources are responsible for a visibility extinction of approximately 7.1 inverse megameters[12] (Mm^{-1}) at Hercules Glades and for a visibility extinction of approximately 4.95 Mm^{-1} at Mingo on the worst 20% days for 2002.[13] As discussed in section IV.C.3 of this proposed rulemaking, ADEQ consulted with the appropriate state air quality agency in Missouri to reach an agreement on whether it is necessary for Arkansas to commit to additional emission reductions that would help Missouri achieve its RPGs for Hercules Glades and Mingo.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by section 51.308(d)(2)(i) of the RHR and in accordance with EPA's 2003 Natural Visibility Guidance,[14] ADEQ calculated baseline/current[15] and natural visibility conditions for its two Class I areas, Caney Creek and Upper Buffalo, on the most impaired and least impaired days, as summarized below (and further described in the TSD).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005[16]. The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction.

ADEQ opted to use the new IMPROVE equation to calculate the ''refined'' natural visibility conditions. This is an acceptable approach under our 2003

[11] The TSD can be found in the docket for this proposal at *http://www.regulations.gov*. The docket number is EPA–R06–OAR–2008–0727.

[12] An inverse megameter is the direct measurement unit for visibility impairment data. It is the amount of light scattered and absorbed as it travels over a distance of one million meters. Deciviews (dv) can be calculated from extinction data as follows: $dv = 10 \times \ln (b_{ext}(Mm^{-1})/10)$, where dv stands for ''deciviews;'' ln stands for ''natural logarithm;'' and b_{ext} stands for ''extinction value.''

[13] See Appendix E of the TSD for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation, found in Appendix 8.1 of the Arkansas RH SIP.

[14] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[15] Since this is the first RH SIP submittal, the calculated baseline visibility condition and the current visibility condition will be the same. It is expected that subsequent RH SIP submittals will reflect different calculated numbers for baseline and current visibility conditions due to the change in conditions.

[16] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

Natural Visibility Guidance. For Caney Creek, ADEQ used the new IMPROVE equation to calculate the ''refined'' natural visibility value for the 20 percent worst days to be 11.58 deciviews and for the 20 percent best days to be 4.23 deciviews. For Upper Buffalo, ADEQ used the new IMPROVE equation to calculate the ''refined'' natural visibility value for the 20 percent worst days to be 11.57 deciviews and for the 20 percent best days to be 4.18 deciviews. We have reviewed ADEQ's estimates of the natural visibility conditions for Caney Creek and Upper Buffalo and are proposing to find these acceptable using the new IMPROVE equation.

The new IMPROVE equation takes into account the most recent review of the science [17] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate (SO_4), nitrate (NO_3), and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Visibility Conditions

As required by section 51.308(d)(2)(i) of the RHR and in accordance with EPA's 2003 Natural Visibility Guidance [18], ADEQ calculated baseline visibility conditions for Caney Creek and Upper Buffalo. The baseline condition calculation begins with the calculation of light extinction, using the IMPROVE equation. The IMPROVE equation sums the light extinction [19] resulting from individual pollutants, such as sulfates and nitrates. As with the natural visibility conditions calculation, ADEQ chose to use the new IMPROVE equation.

The period for establishing baseline visibility conditions is 2000–2004, and baseline conditions must be calculated using available monitoring data. 40 CFR 51.308(d)(2). The IMPROVE monitor at Caney Creek was installed between 2000 and 2002, and therefore ADEQ used visibility data for 2002–2004. The resulting baseline conditions represent an average for 2002–2004. ADEQ calculated the baseline conditions at Caney Creek as 26.36 deciviews on the 20 percent worst days, and 11.24 deciviews on the 20 percent best days. In calculating the baseline conditions at Upper Buffalo, ADEQ used visibility data for 2000–2004. ADEQ calculated the baseline conditions at Upper Buffalo as 26.27 deciviews on the 20 percent worst days, and 11.71 deciviews on the 20 percent best days. We have reviewed ADEQ's estimation of baseline visibility conditions at Caney Creek and Upper Buffalo and are proposing to find these estimates acceptable.

3. Natural Visibility Impairment

To address 40 CFR 51.308(d)(2)(iv)(A), ADEQ also calculated the number of deciviews by which baseline conditions exceed natural visibility conditions for the best and worst days at Caney Creek and Upper Buffalo. At Caney Creek for the 20 percent worst days, ADEQ calculated the number of deciviews by which baseline conditions exceed natural visibility conditions to be 14.78 dv (baseline of 26.36 dv − natural conditions of 11.58 dv). For the 20 percent best days at Caney Creek, the baseline conditions exceed natural visibility conditions by 7.01 dv (baseline of 11.24 dv − natural conditions of 4.23 dv). At Upper Buffalo for the 20% worst days, ADEQ calculated the number of deciviews by which baseline conditions exceed natural visibility conditions to be 14.7 dv (baseline of 26.27 dv − natural conditions of 11.57 dv). For the 20 percent best days at Upper Buffalo, the baseline conditions exceed natural visibility conditions by 7.53 dv (baseline of 11.71 dv − natural conditions of 4.18 dv). We have reviewed ADEQ's estimates of the natural visibility impairment at Caney Creek and Upper Buffalo and are proposing to find these estimates acceptable.

4. Uniform Rate of Progress

In setting the RPGs, ADEQ analyzed and determined the Uniform Rate of Progress (URP) needed to reach natural visibility conditions by the year 2064. In so doing, ADEQ compared the baseline visibility conditions to the natural visibility conditions in Caney Creek and compared the baseline visibility conditions to the natural visibility conditions in Upper Buffalo (as described above), and determined the uniform rate of progress needed in order to attain natural visibility conditions by 2064. ADEQ constructed the URP consistent with the requirements of the RHR and our 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for Caney Creek and for Upper Buffalo.

Using a baseline visibility value of 26.36 dv and a ''refined'' natural visibility value of 11.58 dv for the 20 percent worst days for Caney Creek, ADEQ calculated the URP to be approximately 0.246 dv per year. This results in a total reduction of 14.78 dv that are necessary to reach the natural visibility condition of 11.58 dv in 2064 for Caney Creek. The URP results in a visibility improvement of 3.45 dv for Caney Creek for the period covered by this SIP revision submittal (up to and including 2018).

Using a baseline visibility value of 26.27 dv and a ''refined'' natural visibility value of 11.57 dv for the 20 percent worst days for Upper Buffalo, ADEQ calculated the URP to be approximately 0.245 dv per year. This results in a total reduction of 14.70 dv that are necessary to reach the natural visibility condition of 11.57 dv in 2064 for Upper Buffalo. The URP results in a visibility improvement of 3.43 dv for Upper Buffalo for the period covered by this SIP revision submittal (up to and including 2018).

[17] The science behind the revised IMPROVE equation is summarized in Appendix 5.1 of the Arkansas RH SIP and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, available at *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm* and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[18] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[19] The amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, b_{ext} expressed in inverse megameters (Mm^{-1}), as follows: $HI = 10 \ln(b_{ext}/10)$.

TABLE 1—SUMMARY OF UNIFORM RATE OF PROGRESS

Visibility metric	Caney Creek	Upper Buffalo
Baseline Conditions	26.36 dv	26.27 dv.
Natural Visibility	11.58 dv	11.57 dv.
Total Improvement by 2064	14.78 dv	14.70 dv.
Improvement for this SIP by 2018	3.45 dv	3.43 dv.
Uniform Rate of Progress	0.246 dv/year	0.245 dv/year.

We are proposing to find that ADEQ has appropriately calculated the URP and has satisfied the requirement in section 51.308(d)(1)(i)(B).

C. Evaluation of Arkansas' Reasonable Progress Goals

We are proposing to disapprove Arkansas's Reasonable Progress Goals because the State did not establish the RPGs for Caney Creek and Upper Buffalo in accordance with the requirements of the RHR. As a result, ADEQ's RH SIP fails to ensure adequate reasonable progress toward meeting the national visibility goal. Section 169A(g)(1) of the CAA and section 51.308(d)(1)(i)(A) of the RHR require states to take into account certain factors in establishing its reasonable progress goals and to demonstrate how those factors were taken into consideration in selecting the goals. ADEQ did not do so. We do note that ADEQ did consult with other states regarding the development of RPGs in accordance with the RHR, but this is not enough for us to approve the RPGs.

1. Establishment of the Reasonable Progress Goal

ADEQ adopted the CENRAP modeled 2018 visibility conditions as the RPGs for Caney Creek and Upper Buffalo Class I areas. ADEQ established a RPG of 22.48 dv for Caney Creek for 2018 for the 20% worst days. This represents a 3.88 dv improvement over a baseline of 26.36 dv. For Upper Buffalo, ADEQ established a RPG of 22.52 dv for 2018 for the 20% worst days, which represents a 3.75 dv improvement over a baseline of 26.27 dv. ADEQ calculated that under its RPGs, it would attain natural visibility conditions in 2062 for Caney Creek and 2063 for Upper Buffalo. The CENRAP's projections for 2018 for the 20% best days for Caney Creek and Upper Buffalo, which represent ADEQ's RPGs for the 20% best days, are shown in Figures 10.4 and 10.6 of the RH SIP and in Appendix D to the TSD for CENRAP Emissions and Air Quality Modeling to Support RH State Implementation.[20] A comparison of ADEQ's RPGs to baseline conditions on the least impaired days shows that control of Arkansas sources will result in no degradation in visibility conditions in the first planning period. The CENRAP modeling shows that for the 20% best days, there would be a 0.89 dv and a 0.91 dv improvement in visibility from the baseline for Caney Creek and Upper Buffalo, respectively.

ADEQ established RPGs that ensure no degradation in visibility for the least impaired days. See 40 CFR 51.308(d)(1). However, in setting its RPGs for its Class I areas for the 20% worst days, the State relied on the fact that the emission reductions from BART and from the implementation of other requirements of the CAA would result in RPGs that provided for a slightly greater rate of improvement in visibility than would be needed to attain the URP. Based on this fact, ADEQ did not undertake any further analysis. As discussed below, we do not believe this provides sufficient analysis under section 169A of the CAA and our RHR, and discuss it further in the next section.

2. ADEQ's Reasonable Progress ''Four Factor'' Analysis

In establishing a RPG for a Class I Federal area located within a state, the State is required by CAA § 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A) to ''[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.'' In addition to this explicit statutory requirement, the RHR also establishes an analytical requirement to ensure that each State considers carefully the suite of emission reduction measures necessary to attain the URP. The RHR provides that EPA will consider both the State's consideration of the four factors in section 51.308(d)(1)(i)(A) and its analysis of the URP ''[i]n determining whether the State's goal for visibility improvement provides for reasonable progress.'' 40 CFR 51.308(d)(1)(iii). As explained in the preamble to the RHR, the URP analysis was adopted to ensure that States use a common analytical framework and to ensure an informed and equitable decision making process to ensure a transparent process that would, among other things, ensure that the public would be provided with the information necessary to understand the emission reductions needed, the costs of such measures, and other factors associated with improvements in visibility. 64 FR at 35733. The preamble to the Rule (64 FR 35732) also makes clear that the URP does not establish a ''safe harbor'' for the State in setting its progress goals:

> If the State determines that the amount of progress identified through the [URP] analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it determines that additional progress beyond this amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy.

In establishing its RPGs for 2018 for the 20% worst days, ADEQ relied on the improvements in visibility that are anticipated to result from federal, State, and local control programs that are either currently in effect or with mandated future-year emission reduction schedules that predate 2018, including BART emission limitations established by ADEQ. Based on the emissions reductions from these measures, CENRAP modeled the projected visibility conditions anticipated at each Class I area in 2018 and ADEQ used these results to establish RPGs.

ADEQ argued that because this rate of progress, if sustained, will result in a return to natural visibility prior to 2064, no additional analysis was required and would be an unnecessary exercise. We consistently informed States, including Arkansas, throughout the regional haze development process that the above interpretation of the statute and our regulations is incorrect. ADEQ cannot rely solely on meeting the URP to justify

[20] The TSD for CENRAP Emissions and Air Quality Modeling to Support RH State Implementation is found in Appendix 8.1 of the Arkansas RH SIP.

the conclusion that its goals provide for reasonable progress. We provided comments to ADEQ on the draft Arkansas RH SIP to that effect.[21]

States do have discretion in setting RPGs, but are required to go beyond the URP analysis in establishing RPGs. ADEQ made no attempt to determine whether additional progress would be reasonable based on the statutory factors. It does not appear that such an analysis would have been an unnecessary exercise, as claimed by ADEQ. As discussed in section IV.D.2 of this proposed rulemaking, there are at least two point sources in Arkansas not subject to the BART requirements that contribute to visibility impairment at Arkansas' Class I areas. This conclusion is based on the information in the RH SIP indicating that these sources have predicted impacts exceeding the 0.5 dv threshold ADEQ used to determine whether BART sources contribute to visibility impairment. Given their contribution to visibility impairment, these two sources are potential candidates for emissions controls under reasonable progress, as may be other Arkansas point sources whose visibility impact was not evaluated by ADEQ. Also, as discussed in section IV.E.3 of this proposed notice, Arkansas sources are projected to remain significant contributors to visibility impairment in 2018 and thus providing further support that additional analysis should have been performed according to the statutory factors.

Given that ADEQ did not provide an analysis that considered the four statutory factors under 40 CFR 51.308(d)(1)(i)(A) to evaluate the potential of controlling certain sources or source categories for addressing visibility impacts from man-made sources, it is not possible to assess whether any additional control measures for improving visibility are reasonable. Section 51.308(d)(1)(iii) requires that in determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by the State pursuant to paragraphs (d)(1)(i) and (d)(1)(ii) of this section. Consequently, for the reasons outlined above, we are proposing to find that Arkansas has not satisfied the requirements to establish reasonable progress goals under section 51.308(d)(1)(i)(A).

3. Reasonable Progress Consultation

ADEQ worked with the Missouri Department of Natural Resources (MDNR) and CENRAP to jointly develop the consultation strategy. Consultations were held jointly by Arkansas and Missouri. ADEQ used CENRAP as the main vehicle for facilitating collaboration with FLMs and other states in developing its RH SIP. ADEQ was able to use CENRAP generated products, such as regional photochemical modeling results and visibility projections, and source apportionment modeling to assist in identifying neighboring states' contributions to the visibility impairment at Caney Creek and Upper Buffalo.

ADEQ determined that in addition to Arkansas, the following states have a significant contribution to decreased visibility in one or both of Arkansas' Class I areas: Illinois, Indiana, Kentucky, Missouri, Ohio, Oklahoma, Tennessee, and Texas. ADEQ sent a letter dated February 26, 2007, to these states, requesting that they participate in the consultation process for the Arkansas RH SIP. These states complied with ADEQ's request and participated in the consultation process for the Arkansas RH SIP. ADEQ and MDNR jointly conducted three consultations in the form of conference calls on April 3, May 11, and June 7, 2007. Participants in the consultation process included states and tribes, CENRAP and other Regional Planning Organizations (RPOs), EPA, and FLMs.

At the three consultations held by ADEQ and MDNR, a URP was developed for each Class I area in Arkansas and Missouri (Caney Creek and Upper Buffalo in Arkansas, and Hercules Glades and Mingo in Missouri). The participating states also determined that regional modeling and other findings based on existing and proposed controls arising from local, state, and federal requirements indicated that the two Class I areas in Arkansas and the two Class I areas in Missouri are on the glidepath and are expected to meet the rate of progress goals for the first implementation period ending in 2018. ADEQ determined that additional emissions reductions from other States are not necessary to address visibility impairment at Caney Creek and the Upper Buffalo for the first implementation period ending in 2018, and all states participating in its consultations agreed with this. Therefore, we are proposing to find that Arkansas has satisfied the requirement under section 308(d)(1)(iv) to consult with other States which may reasonably be anticipated to cause or contribute to visibility impairment at Arkansas' two Class I areas.

D. Evaluation of Arkansas' BART Determinations

Arkansas' RH Rule, APC&E Commission Regulation 19, chapter 15, was included in the Arkansas RH SIP submittal, and became effective on October 15, 2007. On August 3, 2010, we received a SIP revision from ADEQ containing amendments to several chapters of APC&E Commission Regulation 19, including Chapter 15. The revisions to Chapter 15 of APC&E Commission Regulation 19, contained in the August 3, 2010 submittal, are mostly non-substantive amendments to the rule we received on September 23, 2008. Chapter 15 of Regulation 19 incorporates by reference the definitions contained in section 40 CFR 51.301 of the Act, as in effect on June 22, 2007. Chapter 15 also identifies the Arkansas BART-eligible sources, the subject to BART sources and their BART requirements, and the BART compliance provisions. The rules further provide that the source's air quality permit be revised to incorporate the resulting source-specific requirements. The State's RH Rule and our proposed action on it are discussed in section IV.D.4 of this proposed rulemaking.

BART is an element of Arkansas' LTS for the first implementation period. As discussed in more detail in section III.D. of this preamble, the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources, (2) an assessment of whether those BART-eligible sources are in fact subject to BART and (3) a determination of any BART controls. ADEQ addressed these steps as follows:

1. Identification of BART–Eligible Sources

The first step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. ADEQ identified the BART-eligible sources in Arkansas by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and our regulations (40 CFR 51.301): (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) began operation on or after August 6, 1962, and was in existence on August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year. ADEQ initially screened its emissions inventory and permitting database to identify major facilities with emission units in one or more of the 26 BART source categories. Following this, ADEQ used its databases

[21] See Appendix 2.1 of the Arkansas RH SIP

and records to identify facilities in these source categories with potential emissions of 250 tons per year (tpy) or more of the following visibility impairing pollutants: sulfur dioxide (SO_2), nitrogen dioxide (NO_X), particulate matter equal to or smaller than ten microns (PM_{10}), volatile organic compounds (VOC) or ammonia (NH_3). Using its databases and records, ADEQ then determined which of these facilities had units that were in existence on August 7, 1977 and began operation after August 7, 1962. ADEQ contacted the sources, when necessary, to obtain or confirm this information. From this, ADEQ determined there are 18 facilities with BART-eligible units. Table 2 lists Arkansas' BART-eligible sources, as identified by Arkansas in Table 9.1 of the RH SIP:

TABLE 2—FACILITIES WITH BART-ELIGIBLE UNITS IN ARKANSAS

BART source category	Facility name	County	Unit description
Fossil fuel-fired steam electric plants of more than 250 MMBTU/hr heat input.	AEP Flint Creek Power Plant	Benton	Boiler
	AECC Carl E. Bailey Generating	Woodruff	Boiler
	AECC John L. McClellan Generating	Ouachita	Boiler
	Entergy Lake Catherine Plant	Hot Spring	Unit 4 Boiler
	Entergy Robert E. Ritchie Plant	Phillips	Unit 2
	Entergy White Bluff Plant	Jefferson	Unit 1
			Unit 2
			Auxiliary Boiler
Kraft pulp mills	Domtar Ashdown Mill	Little River	No. 1 Power
			No. 2 Power
	Delta Natural Kraft	Jefferson	Recovery Boiler
	Evergreen Packaging/International	Jefferson	No. 4 Recovery
	Georgia-Pacific Crossett Mill	Ashley	9A Boiler
	Green Bay Packaging	Conway	Recovery Boiler
	Potlatch Forest Products/Clearwater	Desha	Power Boiler
Petroleum	Lion Oil Company	Union	No. 7 Catalyst
Sulfur recovery	Albermarle Corporation South Plant	Columbia	Tail Gas
Sintering plants	Big River Industries—Arkalite	Crittenden	Kiln A
Chemical process plants	Albermarle Corporation South Plant	Columbia	No. 1 Boiler
			No. 2 Boiler
	Future Fuels/Eastman Chemical	Independence	3 Coal Boilers
	El Dorado Chemical Company	Union	West Nitric Acid
			East Nitric Acid
			Nitric Acid

We note that in chapter 15 of APC&E Regulation 19, contained in the RH SIP submittal we received on September 23, 2008, and as revised by the submittal we received on August 3, 2010, ADEQ identified one more unit (not listed in Table 2), the 6A Boiler at the Georgia-Pacific Crossett Mill, as being BART-eligible. ADEQ did not identify the 6A Boiler as BART-eligible in the RH SIP narrative. Appendix 9.1A states the 6A Boiler began operation prior to August 7, 1962, and that it falls out of the BART eligibility criteria because of its start of operations date. On September 27, 2011, ADEQ submitted supplemental information clarifying that the Georgia-Pacific Crossett Mill provided ADEQ a copy of a boiler inspection report for the 6A Boiler, which states that the inspection of the new boiler took place on August 6, 1962, to determine if the boiler complied with the State and American Society of Mechanical Engineers (ASME) codes.[22] However, ADEQ stated it cannot say with certainty whether the 6A boiler was in operation as of August 6, 1962, or at a later date.[23] Since there is not sufficient

[22] A copy of the boiler inspection report for the 6A Boiler at the Georgia-Pacific Crossett Mill can be found in the docket for this proposed rulemaking.

[23] The BART Guidelines define ''in operation'' as ''engaged in activity related to the primary design function of the source.''

information to determine the date of start of operations of the 6A Boiler, we cannot make the determination that the boiler is not BART-eligible. Therefore, we are proposing to find that the 6A Boiler at the Georgia-Pacific Crossett Mill is BART-eligible.

In the RH SIP, ADEQ identified one unit (the No. 4 recovery boiler) at International Paper/Evergreen Packaging as BART-eligible (shown in Table 2). ADEQ included two other units (the No. 1 and 2 Power Boilers) at International Paper/Evergreen Packaging in its evaluation to determine what sources are subject to BART. The International Paper/Evergreen Packaging No. 1 and No. 2 Power Boilers are not BART-eligible because they were constructed and were in operation prior to August 7, 1962.[24] We agree that the No. 1 and 2 Power Boilers at International Paper/Evergreen Packaging are not BART-eligible.

In the RH SIP, ADEQ did not identify Boilers SN–301A and SN–302A at the Great Lakes Chemical Plant as BART-eligible, but since these units were at one point believed to be BART-eligible, ADEQ included these units in its evaluation to determine what sources are subject to BART. EPA reviewed the federally enforceable operating permit for the Great Lakes Chemical Plant and determined that Boilers SN–301A and SN–302A are not BART-eligible because they are boilers with a heat input rating less than 250 MMBtu/hr and are not integral to the process, as the permit states they are used to supply heat to the process.[25] The BART Guidelines provide that an individual fossil fuel boiler smaller than 250 MMBtu/hr that does not fall into source Category 1 (*i.e.,* Fossil-fuel fired steam electric plants of more than 250 MMBtu/hr heat input), falls into one of the other source categories for BART eligibility only if it is an integral part of a process description at a plant. If the boiler is integral to the process description at a plant, it falls into the source category of the process which it serves. In general, if the boiler serves the process in any way beyond contributing heat, it is integral to the process. Based on information in the current operating air permit for the Great Lakes Chemical Plant, we agree that Boilers SN–301A and SN–302A are not BART-eligible.

As discussed above, there is a discrepancy between the BART-eligible sources identified in the RH SIP narrative, and those identified in the State's RH Rule. Because ADEQ submitted supplemental information on September 27, 2011, clarifying that it did not know with certainty the startup date of operations of the 6A Boiler at the Georgia-Pacific Crossett Mill, we are proposing to find that the 6A Boiler is BART-eligible. We are proposing to approve ADEQ's identification of the remaining BART-eligible sources.

2. Identification of Sources Subject to BART

The second step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e. those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, ADEQ required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

The BART Guidelines direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairing pollutants, and States must exercise their ''best judgment to determine whether VOC or ammonia emissions from a source are likely to have an impact on visibility in an area.'' *See* 70 FR 39162. CENRAP modeling demonstrated that VOCs from anthropogenic sources are not significant visibility-impairing pollutants at Caney Creek and Upper Buffalo. Ammonia emissions in Arkansas are primarily due to area sources, such as livestock and fertilizer application. Because these are not point sources, they are not subject to BART. The emissions inventory prepared for the CENRAP modeling demonstrates that ammonia from point sources are not significant visibility-impairing pollutants in Arkansas. ADEQ further argued that only specific VOCs form secondary organic aerosols that affect visibility and that these compounds are a fraction of the total VOCs reported in Arkansas' emissions inventory. ADEQ does not have the breakdown of VOC emissions necessary to model only those that impair visibility. Because CALPUFF, EPA's prescribed screening model, cannot simulate formation of particles from anthropogenic VOCs, nor their visibility impacts, ADEQ did not evaluate emissions of VOCs in making BART determinations. We have reviewed this information and propose to agree with ADEQ's decision to address only SO_2, NO_X, and PM as visibility impairing pollutants because VOC emissions from anthropogenic sources are not significant visibility-impairing pollutants at Caney Creek and Upper Buffalo and ammonia emissions in Arkansas are primarily due to area sources.

a. Modeling Methodology

The BART Guidelines provide that states may choose to use the CALPUFF[26] modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area and to therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, *i.e.,* ''is subject to BART''. The Guidelines state that we believe CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). ADEQ used the CALPUFF modeling system to determine whether individual sources in Arkansas were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with us and their RPO to address any issues prior to modeling. The CENRAP states, including Arkansas, developed the ''CENRAP BART Modeling Guidelines''.[27] Stakeholders, including

[24] On May 27, 1958, the Arkansas Department of Labor performed an annual inspection of the International Paper No. 1 and 2 Boilers. On June 26, 1958, the Arkansas Department of Labor issued an inspection certificate to the International Paper Company for the No. 1 and 2 Boilers. Since the No. 1 and 2 Boilers were in operation prior to August 7, 1962, they fall out of the startup date criteria for BART eligibility. The inspection certificate for the can be viewed in the docket for this proposed rulemaking.

[25] ADEQ Operating Air Permit for the Great Lakes Chemical Corporation—Central Plant (Permit No. 1077–AOP–R1). This permit can be viewed at *http://www.adeq.state.ar.us/ftproot/pub/WebDatabases/PermitsOnline/Air/1077-AOP-R1.pdf.*

[26] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.,* the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are *available* from the model developer at *http://www.src.com/verio/download/download.htm.*

[27] CENRAP BART Modeling Guidelines, T. W. Tesche, D. E. McNally, and G. J. Schewe (Alpine Geophysics LLC), December 15, 2005, *available* at *http://www.deq.state.ok.us/aqdnew/RulesAndPlanning/Regional_Haze/SIP/Appendices/index.htm.*

EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the CENRAP protocol. CENRAP provided readily available modeling data bases for use by states to conduct their analyses. We note that the original meteorological databases generated by CENRAP did not include observations as EPA guidance recommends, therefore sources were evaluated using the 1st High values instead of the 8th High values. The use of the 1st High modeling values was agreed to by EPA, representatives of the Federal Land Managers, and CENRAP stakeholders. We are proposing to find the chosen model and the general modeling methodology for screening modeling acceptable.

b. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' 70 FR 39104, 39161. The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' *Id.* Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach. Considering the number of sources affecting Arkansas' Class I areas and the magnitude of each source's impact, ADEQ used a contribution threshold of 0.5 dv for determining which sources are subject to BART. We agree with the State's selection of this threshold value.

c. Sources Identified by ADEQ as Subject to BART

Following the elimination of those sources that were found to have visibility impacts well below the 0.5 dv threshold, ADEQ identified the sources contained in Table 3 as being subject to BART.

TABLE 3—SOURCES IN ARKANSAS SUBJECT TO BART

Facility name	BART emission units	Source category	Pollutants evaluated
AECC Carl E. Bailey Generating Station	Unit 1	fossil fuel-fired steam electric plants	SO_2
			NO_X
			PM_{10}
AECC John L. McClellan Generating Station.	Unit 1	fossil fuel-fired steam electric plants	SO_2
			NO_X
			PM_{10}
AEP Flint Creek Power Plant	Boiler No. 1	fossil fuel-fired steam electric plants	SO_2
			NO_X
			PM_{10}
Entergy Lake Catherine Plant	Unit 4	fossil fuel-fired steam electric plants	SO_2
			NO_X
			PM_{10}
Entergy White Bluff Plant	Units 1, 2, and Auxiliary Boiler	fossil fuel-fired steam electric plants	SO_2
			NO_X
			PM_{10}
Domtar Ashdown Mill	Power Boilers No. 1 and 2	kraft pulp mill	SO_2
			NO_X
			PM_{10}

In Appendix 9.2B of the RH SIP, ADEQ provided screening modeling results for all sources identified in the RH SIP as BART-eligible sources, as well as for the SN–301A and SN–302A Boilers at the Great Lakes Chemical plant, the No. 1 and No. 2 Power Boilers at International Paper/Evergreen Packaging, and the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill (as discussed above). Our evaluation of these results showed that four facilities that ADEQ did not identify as subject to BART had modeled visibility impacts that exceed the 0.5 dv contribution

threshold used by ADEQ to determine what sources are subject to BART. Our evaluation to determine whether these sources are subject to BART or not is discussed below:

• As discussed in section V.D.1., ADEQ included the No. 1 and No. 2 Power Boilers at International Paper/ Evergreen Packaging and the SN–301A and SN–302A Boilers at the Great Lakes Chemical plant in its modeling evaluation to determine what sources are subject to BART. As already discussed elsewhere in this proposed notice, we are proposing to approve ADEQ's identification of these two sources as not BART-eligible and not subject to BART.

• As discussed in section IV.D.2.a. of this proposed rulemaking, the original meteorological databases generated by CENRAP did not include observations as EPA guidance recommends. Therefore, in their evaluation to determine if a source exceeds the 0.5 dv contribution threshold at nearby Class I areas, states used the 1st high values (*i.e.*, maximum value) of modeled visibility impacts instead of the 8th high values (*i.e.*, 98th percentile value). The use of the 1st high modeled values was agreed to by EPA, representatives of the Federal Land Managers, and CENRAP stakeholders. ADEQ's modeling shows that Future Fuels/Eastman Chemical has a modeled visibility impact of 0.711 dv at Hercules-Glade. Further examination of the modeling results reveals that only one day of the three years modeled exceeds the 0.5 dv contribution threshold value at any Class I area. Since only one day is projected above the threshold, we believe it is very unlikely that a refined modeling approach using updated meteorological data, which would allow for the use of the 98th percentile modeled visibility impact rather than the maximum impact, would show modeled impacts above the threshold. Therefore, we are proposing that this facility is not subject to BART.

• The visibility modeling provided in Appendix 9.2B of the Arkansas RH SIP shows that the 9A Boiler of the Georgia-Pacific Crossett Mill has visibility impacts exceeding the 0.5 dv contribution threshold, with a visibility impact above 1 dv at Caney Creek and Hercules-Glade. EPA also reviewed ADEQ's revised modeling for this source, which looked at the visibility impacts of both the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill. Using updated emission rates, ADEQ's revised modeling showed projected visibility impacts of the two boilers combined below the 0.5 dv threshold. The revised emission rates were based on stack test results and assumptions based on worst case monthly fuel usage, from the perspective of total emissions. However, from the data provided, it is unclear if the modeled emissions are representative of the actual maximum 24 hour emissions from the highest emitting day over the modeled period. There is no supporting technical analysis discussing the assumptions made in the revised emission estimates and explaining how stack test data was used to estimate maximum emissions nor is fuel usage information provided for the modeled period. We are proposing to disapprove ADEQ's determination that the Georgia-Pacific Crossett Mill's 6A and 9A Boilers are not subject to BART because ADEQ has not modeled the visibility impact of the 6A and 9A Boilers using acceptable estimates of maximum 24 hour emissions, and as a result we do not know if the boilers have a combined visibility impact below the 0.5 dv contribution threshold or not. Based on the permit allowables and available information, the two boilers are subject to BART and require a full BART analysis.

We are proposing to approve ADEQ's identification of subject to BART sources, except for ADEQ's determination that the Georgia-Pacific Crossett Mill 6A and 9A Boilers are not subject to BART.

3. BART Determinations

The third step of a BART evaluation is to perform the BART analysis. BART is a source-specific control determination, based on consideration of several factors set out in section 169A(g)(2) of the CAA. These factors include the costs of compliance and the degree of improvement in visibility associated with the use of possible control technologies. EPA issued BART Guidelines (Appendix Y to Part 51) in 2005 to clarify the BART provisions based on the statutory and regulatory BART requirements (70 FR 39164). The BART Guidelines describe the BART analysis as consisting of the following five basic steps:

• Step 1: Identify All Available Retrofit Control Technologies,

• Step 2: Eliminate Technically Infeasible Options,

• Step 3: Evaluate Control Effectiveness of Remaining Control Technologies,

• Step 4: Evaluate Impacts and Document the Results, and

• Step 5: Evaluate Visibility Impacts.

We note the BART Guidelines (Appendix Y to part 51) provide that states must follow the guidelines in making BART determinations on a source-by-source basis for 750 MW power plants but are not required to use the process in the guidelines when making BART determinations for other types of sources. States with subject to BART units with a generating capacity less than 750 MW are strongly encouraged to follow the BART Guidelines in making BART determinations, but they are not required to do so. However, the requirement to perform a BART analysis that considers ''the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology,'' is found in section 51.308(e)(1)(ii)(A) and the RHR, and applies to all subject to BART sources.

All of the sources that are subject to BART presented in Table 3 are fossil fuel fired electricity generating units, with the exception of the Domtar Ashdown Mill, which is a kraft pulp mill. ADEQ performed BART determinations for these sources for NOx, SO_2, and PM.

We have found several problems in these BART determinations, which lead us to propose disapproval of some of ADEQ's BART determinations. We discuss these problems in detail in the individual BART determination sections, and we summarize some general issues in the paragraphs that follow.

For some sources, ADEQ did not adequately consider whether retrofit controls should be required based on a flawed analysis of the source's potential visibility impacts. ADEQ assumed that if pre-control modeling [28] conducted on the basis of a single pollutant showed that the source's emissions of the pollutant in question did not ''contribute'' to visibility impairment, then further BART analysis for that pollutant was unnecessary. This approach is unacceptable. Due to the nonlinear nature and complexity of atmospheric chemistry and chemical transformation among pollutants, ideally all relevant pollutants should be modeled together to predict the total visibility impact at each Class I area receptor.[29] At a minimum, NO_X and SO_2

[28] Throughout this document, any reference to ''ADEQ modeling'' refers to modeling performed or reviewed by ADEQ.

[29] Memo from Joseph Paisie (Geographic Strategies Group, OAQPS) to Kay Prince (Branch Chief EPA Region 4) on Regional Haze Regulations

emissions should be modeled together to determine the visibility impacts attributable to these pollutants when evaluating controls and combinations of controls in determining BART for a source. Predicting the impacts of PM on visibility is relatively straight-forward, unlike predicting the impacts of SO_2 and NO_X. Using CALPUFF on a pollutant specific basis to model only the impact of PM emissions on visibility is an acceptable approach to determine whether a source should be subject to review for PM controls, or alternatively, that the source is not subject to BART for PM. ADEQ applied a threshold of 0.5 dv for determining whether a source ''contributes'' to visibility impairment on a per-pollutant basis. As discussed above, the State selected a threshold of 0.5 dv for the initial screening modeling that included all pollutants. Clearly, a lower threshold value is needed in evaluating pollutant-specific modeling for sources that emit more than one visibility impairing pollutant. Furthermore, this approach is only acceptable for PM-specific modeling. We note that a State may establish *de minimis* levels of emissions (applicable on a plant-wide basis) of visibility impairing pollutants to exclude some sources from further evaluation when the emissions are so minimal that they are unlikely to contribute to regional haze.[30]

For some BART determinations, ADEQ did not properly determine BART, but instead concluded that the presumptive limits in the BART Guidelines could be adopted in place of a careful source-specific analysis of the appropriate level of controls. As noted above, EPA issued BART Guidelines in 2005 that address the BART determination process by laying out a step by step process for taking into consideration the factors relevant to a BART determination. In that rulemaking, EPA also established presumptive BART limits for certain electric generating units (EGUs) located at power plants 750 MW or greater in size based variously on the size of the unit, the type of unit, the type of fuel used, and the presence or absence of controls.[31] Having identified controls that the Agency considered to be generally cost-effective across all affected units, the EPA took into account the substantial degree of visibility improvement anticipated to result from the use of such controls on these EGUs and concluded that such BART-eligible sources should at least meet the presumptive limits. The presumptive limits accordingly are the starting point in a BART determination for these units—unless the State determines that the general assumptions underlying EPA's analysis are not applicable in a particular case. EPA did not provide that States could avoid a source-specific BART determination by adopting the presumptive limits. In fact, nothing on the record would support the conclusion that the presumptive limits represent the ''best available retrofit controls'' for all EGUs at these large power plants. EPA did not address the question of whether in specific cases more stringent controls would be called for but rather simply concluded that it could not reach a generalized conclusion as to the appropriateness of more stringent controls for categories of EGUs. As a result, the BART Rule does not establishing a ''safe harbor'' from more stringent regulation under the BART provisions. We have consistently informed ADEQ in comments to its draft SIP and in conversations that foregoing a BART analysis is not acceptable.

For the BART determinations for which ADEQ did perform a full BART analysis that considered the statutory factors under section 51.308(e)(1)(ii)(A), we are proposing to find that ADEQ did not adequately consider one or more of the factors it is required to consider in determining whether retrofit controls should be required.

For more details, please see our evaluation of the BART determination for each subject to BART unit, below, and the TSD.

a. AECC Bailey Unit 1 and AECC McClellan Unit 1 BART Determinations

The AECC Bailey Unit 1 and the AECC McClellan Unit 1 are BART-eligible sources. The AECC Bailey Unit 1 is a boiler with a gross output of 122 MW and a maximum heat input rate of 1350 MMBtu/hr, and is currently permitted to burn both natural gas and fuel oil. The fuel oil burned at the plant is subject to an operating air permit sulfur content limit of 2.3% by weight. The AECC McClellan Unit 1 is a boiler with a gross output of 134 MW and a maximum heat input rate of 1436 MMBtu/hr, and is currently permitted to burn both natural gas and fuel oil. The fuel oil burned at the plant is subject to an operating air permit sulfur content limit of 2.8% by weight.

Regarding BART for NO_X and PM, ADEQ conducted pollutant specific pre-control CALPUFF[32] modeling for the AECC Bailey Unit 1 and the AECC McClellan Unit 1. AECC stated that the results of the NO_X modeling show that NO_X does not cause or contribute to visibility impacts.[33] Based on this, AECC determined and ADEQ agreed it was not necessary to make a BART determination for NO_X for either the AECC Bailey Unit 1 or AECC McClellan Unit 1. However, the ADEQ's modeling results presented indicate that the predicted visibility impacts from NO_X are as high as 0.347 dv at Mingo due to emissions from the AECC Bailey Unit 1, and 0.421 dv at Caney Creek due to emissions from the AECC McClellan Unit 1. As stated above, NO_X and SO_2 emissions should be modeled together due to the nonlinear nature and complexity of atmospheric chemistry and chemical transformation among pollutants. Evaluation of the screening modeling results for these units reveals that on some of the most impacted days, NO_X is a significant contributor to the visibility impairment due to these units. Post-control modeling performed by ADEQ, applying the use of 1% sulfur fuel, show that these units would continue to cause or contribute to visibility impairment at a number of Class I areas, with NO_X emissions responsible for over 50% of the impairment on some days under this control scenario. In light of the relatively high impacts due to NO_X, a combination of NO_X and SO_2 controls may prove to be cost-effective and provide for substantial visibility improvement and should therefore be evaluated.

For PM BART, AECC decided and ADEQ agreed that PM does not cause visibility impacts because the PM emissions are less than those of NO_X at these units. This conclusion is not supported in the record by PM visibility modeling results, additional technical analysis, or reference to a permit limit for PM that restricts emissions below a level that will impact visibility. Neither the State nor AECC have completed a BART analysis that considers the

and Guidelines for Best Available Retrofit Technology (BART) Determinations, July 19, 2006.

[30] ''States may choose to identify de minimis levels of pollutants at BART-eligible sources (but are not required to do so). De minimis values should be identified with the purpose of excluding only those emissions so minimal that they are unlikely to contribute to regional haze. Any de minimis values that you adopt must not be higher than the PSD applicability levels: 40 tons/yr for SO_2 and NO_X and 15 tons/yr for PM_{10}. These de minimis levels may only be applied on a plant-wide basis.'' 40 CFR Appendix Y to part 51.

[31] 70 FR at 39131–39136.

[32] The CALPUFF modeling system consists of a meteorological data pre-processor (CALMET), an air dispersion model (CALPUFF), and post-processor programs (POSTUTIL, CALSUM, CALPOST). The CALPUFF modeling system is the recommended model for conducting BART visibility analysis.

[33] Arkansas Electric Cooperative Corporation Best Available Retrofit Technology Engineering Analysis prepared by Stephen Cain, October 20, 2006.

statutory factors under section 51.308(e)(1)(ii)(A) that states are required to consider in determining what type and level of control is BART for a source for NO_X and PM, or fully demonstrated that these units have sufficient pollution controls in place for these pollutants such that additional controls would likely achieve very low emissions reductions, have minimal visibility benefit, and not be cost-effective. Therefore, we are proposing to disapprove the NO_X and PM BART determinations for these two units.

Regarding BART for SO_2 for the two sources, AECC performed a BART analysis to determine what retrofit controls are BART for AECC Bailey Unit 1 and AECC McClellan Unit 1. In Step 1 of this BART analysis, AECC identified use of fuel oil with 1% sulfur content and installation of a scrubber as the only two control options available. This is a problem because 1% sulfur fuel oil is not the maximum level of control available when it comes to the use of low sulfur fuel as a control strategy for SO_2 emissions. After completing the remaining steps of the BART analysis, AECC determined and ADEQ agreed that BART for the AECC Bailey Unit 1 and the AECC McClellan Unit 1 is use of fuel oil with 1% sulfur content. Our evaluation of AECC's BART analysis beyond Step 1 can be found in the TSD. We are not discussing in this proposed notice our evaluation of AECC's BART analysis for the AECC Bailey Unit 1 and the AECC McClellan Unit 1 beyond Step 1, as we are proposing that AECC did not properly complete the first step of the BART analysis and thus we find that AECC and ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) in determining BART. Specifically, we are proposing that AECC and ADEQ did not properly ''take into consideration the technology available'' by failing to consider the maximum level of control each control option is capable of achieving. The BART Guidelines (Appendix Y to Part 41) provide that in identifying all options, you must identify the most stringent option (*i.e.,* maximum level of control each technology is capable of achieving) as well a reasonable set of options for analysis. The requirement to consider the most stringent level of control when making BART determinations is also found in the RHR (64 FR 35740), which provides that in establishing source specific BART emission limits, the State should identify and consider in the BART analysis the maximum level of emission reduction that has been achieved in other recent retrofits at existing sources in the source category. The visibility regulations define BART as ''an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction.'' Since recent retrofits at existing sources provide a good indication of the current ''best system'' for controlling emissions, these controls must be considered in the BART analysis. In considering use of fuel oil with low sulfur content as a control option in the BART analysis, AECC did not identify and consider the maximum level of control achievable from the use of low sulfur fuel oil, and thus the BART analysis is flawed.

Sulfur content in fuel oil currently can be found in industry to be 0.5% by weight or less. AECC should have considered the use of fuel oil with 0.5% sulfur content or less in the BART analysis for the two units in question. We are aware of several fossil-fuel fired steam electric plants throughout the country that are currently limited by permit to burn fuel oil with a sulfur content of 0.5% or less by weight. Connecticut limits the sulfur content of fuel oil to a maximum 0.3% [34] and New York requires facilities to comply with the use of fuel oil with varying sulfur content limits, with facilities in New York City being required to use fuel oil with a maximum 0.3% sulfur content.[35] Lowering the sulfur content in fuel oil is also a part of the long-term strategy recommended by the Mid-Atlantic/Northeast Visibility Union (MANE–VU) states to reduce and prevent regional haze.[36] The MANE–VU states in the inner zone (New Jersey, New York, Delaware, and Pennsylvania) plan to reduce the sulfur content of No. 6 residual fuel oil to 0.3–0.5% sulfur by weight by no later than 2012.[37] Therefore, the use of fuel oil with a 0.5% sulfur content or lower is technically feasible and either AECC or ADEQ should have evaluated its cost effectiveness for the AECC Bailey Unit 1 and the AECC McClellan Unit 1. In addition, an operating air permit restriction to use only natural gas as the fuel source for the two units would have also been acceptable. As part of the BART analysis, ADEQ and/or AECC must perform a cost analysis in which all cost estimates are properly documented and must evaluate the visibility impacts of all technically feasible control options considered before making a BART determination.

Therefore, for the reasons expressed above, we are proposing to disapprove the SO_2, NO_X, and PM BART determinations for the AECC Bailey Unit 1 and the AECC McClellan Unit 1.

b. AEP Flint Creek No. 1 Boiler BART Determination

The AEP Flint Creek No. 1 Boiler is a BART-eligible source. The unit has a gross output of 558 MW and a maximum heat input rate of 6324 MMBtu/hr, and burns primarily low sulfur western coal, but can also combust fuel oil and tire derived fuels (TDF). Fuel oil firing is only allowed during startup and shutdown of the boiler, startup and shutdown of the pulverizer mills, for flame stabilization when the coal is frozen, for fuel oil tank maintenance, to prevent boiler tube failure in extreme cold weather, and when the unit is offline for maintenance.

Regarding BART for PM, ADEQ conducted pre-control CALPUFF modeling for the AEP Flint Creek No. 1 Boiler showing that PM_{10} and $PM_{2.5}$ emissions from the source have minimal visibility impacts at each Class I area within 300 km. Based on this, AEP decided and ADEQ agreed that the existing PM emission limit in the operating air permit, which is achievable through the use of the existing electrostatic precipitator (ESP), is BART for PM for AEP Flint Creek No. 1 Boiler. We reviewed the CALPUFF visibility modeling submitted by ADEQ for AEP Flint Creek No. 1 Boiler, and agree that PM_{10} and $PM_{2.5}$ emissions from the source have minimal visibility impacts at each Class I area within 300 km. As explained in section IV.D.3 of this proposed rulemaking, using CALPUFF on a pollutant specific basis to model only the impact of PM emissions on visibility is an acceptable approach to determine whether a source should be subject to review for PM controls. In the case of the AEP Flint Creek No. 1 Boiler, we have found that the visibility impact due to PM emissions alone is so minimal such that the installation of any additional PM controls on the unit would likely

[34] Connecticut Department of Environmental Protection (DEP). ''22a–174–19a: Control of Sulfur Dioxide Emissions from Power Plants and Other Large Stationary Sources of Air Pollution,'' Regulations of Connecticut State Agencies, Title 22a: Abatement of Air Pollution, December 28, 2000. *http://www.dep.state.ct.us/air2/regs/mainregs/sec19a.pdf.*

[35] New York State Department of Environmental Conservation (DEC). ''Subpart 225–1: Fuel Composition and Use-Sulfur Limitations,'' Environmental Conservation Rules and Regulations, May 8, 2005. *http://www.dec.state.ny.us/website/regs/subpart225_1.html.*

[36] MANE–VU is an RPO that includes the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, and also the District of Columbia.

[37] *See* 76 FR 27973.

achieve very low emissions reductions, have minimal visibility benefit, and not be cost-effective. Therefore, we are proposing to approve ADEQ's determination that PM BART for AEP Flint Creek No. 1 Boiler is the existing PM emission limit. The federally enforceable operating air permit for the source sets the PM emission limit for the unit at 0.1 lb/MMBtu.[38]

Regarding BART for SO_2 and NO_X, neither AEP nor ADEQ performed a BART analysis that considered the statutory factors states are required to consider in determining what retrofit controls are BART for the AEP Flint Creek No. 1 Boiler. Instead, AEP determined and ADEQ agreed that BART for SO_2 is the presumptive limit of 0.15 lb/MMBtu and that BART for NO_X is the presumptive limit of 0.23 lb/MMBtu for AEP Flint Creek No. 1 Boiler.[39] We are aware that the AEP Flint Creek Power Plant has a 558 MW generating capacity, and is therefore not required to follow the BART Guidelines in making BART determinations for the No. 1 Boiler. However, this facility and/or the State must still conduct a BART analysis as specified in 40 CFR 51.308(e)(1)(ii)(A), which provides that:

> The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART within the State. In this analysis, the State must take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

Therefore, we are proposing to disapprove ADEQ's BART finding since neither AEP nor ADEQ conducted a BART analysis considering the best system of controls for BART for SO_2 and NO_X for AEP Flint Creek No. 1 Boiler. The source and/or ADEQ should have performed a BART analysis for SO_2 and NO_X. Controls achieving more than the SO_2 and NO_X presumptive limits are available and should be considered in the BART analysis, especially considering the magnitude of the visibility impact of the AEP Flint Creek No. 1 Boiler on the Class I areas within 300 km.[40] For instance, selective catalytic reduction (SCR) controls are routinely designed and have routinely achieved a NO_X control efficiency of 90% and a NO_X emission rate as low as 0.04 lb/MMBtu,[41] based on a 30-day rolling average. Furthermore, SCR system designers analyzed EPA's Clean Air Market's CEMS data to determine the NO_X levels that are currently being achieved by over 100 SCR-equipped coal-fired boilers, and found that 25 of these units are achieving NO_X emissions less than 0.05 lb/MMBtu on an hourly average basis.[42] Flue gas desulfurization (FGD) units (*i.e.,* wet and dry scrubbers), are a type of post-combustion control for SO_2 emissions. In a report for the National Lime Association, Sargent & Lundy stated that vendors guarantee SO_2 reduction efficiencies of up to 95%, or as low as 0.06 lb/MMBtu SO_2 for dry scrubbers.[43] The Longleaf Energy Station in Georgia has two 600 MW boilers that burn coal and are equipped with a dry scrubber capable of achieving SO_2 emissions of 0.065 lb/MMBtu on a 30-day rolling average when the uncontrolled SO_2 emission rate is less than or equal to 1 lb/MMBtu.[44] The Desert Rock Energy Company, a 1500 MW coal fired power plant in New Mexico, is equipped with a wet scrubber and has an SO_2 emission limit of 0.060 lb/MMBtu, averaged over a 24-hour period.[45] We note that a 24-hour average is much more stringent than a 30-day rolling average.

Therefore, for the reasons expressed above, we are proposing to disapprove ADEQ's determination of SO_2 and NO_X BART for the AEP Flint Creek No. 1 Boiler.

c. Entergy Lake Catherine Unit 4 BART Determination

The Entergy Lake Catherine Unit 4 is a BART-eligible source. Unit 4 is a combustion engineering tilting tangential fired boiler powering a 552 MW generator. The unit has a maximum heat input rate of 5850 MMBtu/hr and burns primarily natural gas with No. 6 fuel oil as the secondary fuel. There is currently no emission control equipment connected to the boiler. Class I areas within 300 km of the facility include Caney Creek, Upper Buffalo, and Hercules Glades.

Since Unit 4 is permitted to burn both natural gas and No. 6 fuel oil, ADEQ made BART determinations for both natural gas firing and fuel oil firing scenarios. The Arkansas RH SIP contains the CALPUFF pre-control modeling files for the natural gas firing scenario, and ADEQ also provided the modeling files for the fuel oil firing scenario. CALPUFF post-control modeling results for both gas and oil firing were also included in the Arkansas RH SIP. In the State's September 27, 2011 supplemental submittal, ADEQ brought to our attention that per an inspection report dated July 28, 2011, Entergy Lake Catherine Unit 4 is no longer capable of burning fuel oil. ADEQ noted that the fuel tanks at the source have been emptied and the pipework necessary to burn fuel oil is in the process of being removed. ADEQ stated the source does maintain the ability to burn natural gas. We note that since the source has not modified its permit and ADEQ has not revised its RH SIP to reflect this change, we are not disregarding the BART emission limits for the source for fuel oil firing in this proposed rulemaking.

Regarding BART for SO_2 and PM for the natural gas firing scenario, Entergy stated that most of the visibility-causing emissions from Unit 4 are due to NO_X since SO_2 and PM emissions from natural gas-fired boilers are generally very low. Therefore, for the natural gas

[38] ADEQ Operating Air Permit for AEP-Flint Creek Power Plan (Permit No. 0276–AOP–R5). This permit can be viewed at *http://www.adeq.state.ar.us/ftproot/pub/WebDatabases/PermitsOnline/Air/0276-AOP-R5.pdf.*

[39] The ''presumptive limits'' are the rebuttable specific limits established in the BART Rule for SO_2 and NO_X for certain EGUs based on fuel type, unit size, cost effectiveness, and the presence or absence of pre-existing controls.

[40] ADEQ's CALPUFF visibility modeling indicates the highest modeled visibility impact of AEP Flint Creek No. 1 Boiler on nearby Class I areas is: 3.970 Δdv at Caney Creek; 3.781 Δdv at Upper Buffalo; 3.983 Δdv at Hercules Glade; 2.596 Δdv at Mingo; 1.420 Δdv at Sipsey. ADEQ's post-control visibility modeling shows that the State's BART determinations would result in the source still causing visibility impairment at Caney Creek (1.573 Δdv), Upper Buffalo (2.089 Δdv), and Hercules Glade (1.541 Δdv), and contributing to visibility impairment at Mingo (0.927) (Appendix 9.2B of the Arkansas Regional Haze SIP).

[41] See, *e.g.,* William J. Gretta and others, The SCR Retrofit Design for the Seminole Generating Station, PowerGen, 2008, Hitachi SCR at Seminole Electric Delivers 0.04 lb/MMBtu NO_X (Preliminary Results), FGD and $DeNO_X$ Newsletter, December 2009, No. 380, and NO_X CEMS data reported to Clean Air Markets.

[42] Clay Erickson, Robert Lisauskas, and Anthony Licata, What New in SCRs, DOE's Environmental Control Conference, May 16, 2006, p. 28. Available here: *http://www.netl.doe.gov/publications/proceedings/06/ecc/pdfs/Licata.pdf;* LG&E Energy, Selective Catalytic Reduction: From Planning to Operation, Competitive Power College, December 2005, p. 75–77.

[43] See also Sargent & Lundy, IPM Model—Revisions to Cost and Performance for APC Technologies, SDA FGD Cost Development Methodology, Final, August 2010, p. 1 (''It should be noted that the lowest available SO_2 emission guarantees, from the original equipment manufacturers of SDA FGD systems, are 0.06 lb/MMBtu.'').

[44] Georgia Environmental Protection Division, Longleaf Energy Station, Permit No. 4911–099–0033–P–01–0, April 9, 2010. Available at: *http://airpermit.dnr.state.ga.us/gaairpermits/PermitPDF.aspx?id=PDF-PI-18499.*

[45] U.S. EPA, Region 9, Prevention of Significant Deterioration Permit, Desert Rock Energy Company, July 31, 2008. Available at: *http://www.regulations.gov/search/Regs/home.html#docketDetail?R=EPA-R09-OAR-2007-1110.*

firing scenario for Unit 4, Entergy made no BART determination for SO_2, and determined that BART for PM is the existing PM emission limit in the operating air permit. ADEQ agreed with the Entergy's determination. Revisions to the State's RH Rule, Chapter 15 of APC&E Commission Regulation 19, which were submitted to us on August 3, 2010, state the existing PM emission limit as of October 15, 2007 is PM BART for the natural gas firing scenario for Entergy Lake Catherine Unit 4. This corresponds to an emission limit of 45 lb/hr PM.[46] We agree that SO_2 and PM emissions from natural gas-fired boilers are generally very low, and therefore we are proposing to approve ADEQ's decision not to make a BART determination for SO_2 for the natural gas firing scenario for Unit 4. Since we have found that the visibility impact of Unit 4 due to PM emissions alone (from natural gas firing) is so minimal such that the installation of any additional PM controls on the unit would likely achieve very low emissions reductions, have minimal visibility benefits, and not be cost-effective, we are also proposing to approve ADEQ's determination that BART for PM for Unit 4 for the natural gas firing scenario is the existing PM emission limit as of October 15, 2007, or 45.0 lb/hr.

Regarding BART for NO_X for the natural gas firing and fuel oil firing scenarios, Entergy conducted a BART analysis to determine what retrofit controls are BART for Lake Catherine Unit 4. In Step 1 of the BART analysis for NO_X, Entergy considered a combination of the following NO_X combustion controls for the natural gas firing scenario: boiler tuning, burners out of service (BOOS), induced flue gas recirculation (IFGR), overfire air (OFA), and low NO_X burners (LNB). Entergy considered a combination of the following NO_X combustion controls for the fuel oil firing scenario: boiler tuning, boiler modifications, BOOS, and forced flue gas recirculation (FFGR). However, Entergy did not consider post-combustion controls for NO_X, such as selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR), even though these controls are technically feasible and available technologies for reducing NO_X emissions currently used by similar facilities. We provided comments to ADEQ to this effect on May 1, 2007.[47] In response to our comments, Arkansas included in its RH SIP submittal the results of a computerized model it obtained from Entergy, which according to the source, evaluated Unit 4's performance and the capital and operation and maintenance costs associated with each identified control technology. Entergy reported that the results of the computerized model showed that post-combustion controls, such as SCR and SNCR, had a cost that would be uneconomical to install. The results of this computer model are discussed further in our discussion of Step 4 of the BART analysis.

For Step 3 of the NO_X BART analysis, Entergy evaluated the control effectiveness of the control options considered in Step 1 for both the natural gas and fuel oil firing scenarios. We generally agree with Entergy's evaluation of the control effectiveness of all control options considered. In Step 4 of the BART analysis, Entergy considered the costs of compliance for each control option. In evaluating the costs of compliance, Entergy analyzed the cost-effectiveness in annualized dollars per ton of NO_X removed ($/ton) of the control options identified in Step 1 of the BART analysis for NO_X for the natural gas and fuel oil firing scenarios. We note there are two flaws in Entergy's cost-analysis. Entergy provided no documentation or detailed breakdown of the cost estimates. The results of the computer model the source used to determine the cost-effectiveness of post-combustion controls also did not provide documentation or a detailed breakdown of the cost estimates. We have no basis to verify the validity of neither the cost estimates nor Entergy's determination based on the cost estimation analysis for BART. The basis for cost estimates should be documented either with data supplied by a vendor (*i.e.,* budget estimates or bids) or by a referenced source. This was not done in the BART analysis. Furthermore, Unit 4 is a peaking unit,[48] and Entergy attempted to account for this by assuming a 10% capacity factor[49] in the calculation of the metrics for tons removed and $/ton removed for all control options considered in Step 1 of the BART analysis. The computer model Entergy used to estimate the cost effectiveness of post-combustion controls likewise assumed a 10% capacity factor in the calculation of the metrics for tons removed and $/ton removed. Given that there are no permit requirements in place that would limit the operation of this unit to 10% capacity, the facility can legally be operated well above the 10% capacity factor assumed by Entergy. Thus, any cost effectiveness analysis based on a 10% capacity factor is likely to significantly inflate the cost per ton of controlling this unit. In support of the 10% capacity utilization factor, Entergy stated that the unit has operated, on average, at a capacity of 6.9% for the past three years. However, past use of this unit was much higher—approximately 46% on average—over the 2001–2005 period.[50] Given the variability in capacity utilization of this unit over the past ten years, the assumed 10% capacity utilization should be supported by an enforceable limit. Therefore, we are proposing to disapprove ADEQ's NO_X BART determination for both the natural gas and fuel oil firing scenarios for Lake Catherine Unit 4.

For SO_2 BART for the fuel oil-firing scenario, Entergy identified only one available control option in Step 1 of the BART analysis- use of fuel oil with low sulfur content. ADEQ agreed with the source's decision. Entergy only considered the use of fuel oil with 1%, 0.5%, and 0.2% sulfur content by weight. We note use of fuel oil with 1% sulfur content is the base case, as Entergy stated the source's current Title V permit limits the sulfur content of fuel oil used to 1%. Entergy did not consider any post-combustion SO_2 controls in the BART analysis, even though post-combustion control technologies, such as wet and dry scrubbers, are currently being used by comparable facilities to control SO_2 emissions. As such, Entergy did not identify and consider control technologies that are capable of the maximum level of control that is achievable, as is required by the BART guidelines and the RHR. In Step 3 of the

[46] See ADEQ Operating Air Permit for Entergy Arkansas Inc.-Lake Catherine Plant (Permit No. 1717–AOP–R4). This permit can be viewed at *http://www.adeq.state.ar.us/ftproot/pub/WebDatabases/PermitsOnline/Air/1717-AOP-R4.pdf.*

[47] Our comments on this matter are documented in Appendix 9.3B of the Arkansas RH SIP.

[48] 40 CFR 72.2 defines a peaking unit as ''[a] unit that has (i) An average capacity factor of no more than 10.0 percent during the previous three calendar years and (ii) A capacity factor of no more than 20.0 percent in each of those calendar years.''

[49] 40 CFR 72.2 defines capacity factor as either ''(1) The ratio of a unit's actual annual electric output (expressed in MWe/hr) to the unit's nameplate capacity (or maximum observed hourly gross load (in MWe/hr) if greater than the nameplate capacity) times 8760 hours; or (2) The ratio of a unit's annual heat input (in million British thermal units or equivalent units of measure) to the unit's maximum rated hourly heat input rate (in million British thermal units per hour or equivalent units of measure) times 8,760 hours.

[50] Table 2–1 of the ''BART Analysis for Lake Catherine Plant- Unit 4,'' prepared by Robert Paine, December 2006 notes that Unit 4 was operated 6,988 hours in 2001 (79.7% utilization); 5,651 hours in 2002 (64.5% utilization); 3,972 hours in 2003 (45.3% utilization); 1,534 hours in 2004 (17.5% utilization); and 2,059 hours in 2005 (23.5% utilization).

BART analysis, Entergy considered the control effectiveness of all technically feasible control options identified in Step 1 by using AP–42 factors for 1%, 0.5%, and 0.2% sulfur residual oil to determine the amount of sulfur dioxide emissions that would be eliminated by use of low sulfur fuel oil. Entergy found that based on a 10% capacity factor, use of 0.5% sulfur fuel oil would result in 1,059 tpy SO_2 removed from the baseline and use of 0.2% sulfur fuel oil would result in 1,802 tpy SO_2 removed from the baseline. In Step 4 of the BART analysis, Entergy considered the costs of compliance for each control option. Entergy provided no documentation or detailed breakdown of the costs estimates for low sulfur fuel oil. Therefore, we have no basis to verify the validity of either the cost estimates or ADEQ's BART determination based on the cost estimation. The basis for cost estimates should be documented, and should clearly indicate the amount of fuel oil that corresponds to the annual cost listed in the cost-analysis. After conducting post-control visibility modeling, Entergy determined and ADEQ agreed that SO_2 BART for the fuel oil firing scenario is an SO_2 emission limit of 0.562 lb/MMBtu on a 30 day rolling average. The RH SIP provides conflicting information on whether this emission limit corresponds to use of 1% or 0.5% sulfur fuel oil. On September 27, 2011, ADEQ submitted a supplemental submittal clarifying that the 0.562 lb/MMBtu emission limit corresponds to use of 0.5% sulfur content fuel oil. However, for the reasons discussed above, we are proposing to find that the source and ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) in determining SO_2 BART for the fuel oil firing scenario. Specifically, we are proposing that ADEQ did not properly take into consideration ''the technology available'' and ''the costs of compliance.''

Regarding BART for PM for the fuel oil firing scenario, Entergy identified the PM_{10} emission rates associated with use of 1%, 0.5%, and 0.2% sulfur fuel oil. Entergy determined PM BART for Unit 4 for the fuel oil firing scenario is 0.037 lb/MMBtu on a 30 day rolling average. ADEQ's September 27, 2011 supplemental submittal clarified that this PM emission limit corresponds to use of 0.5% sulfur content fuel oil. ADEQ and Entergy did not consider any post-combustion controls in the BART analysis for PM for the fuel oil firing scenario. We note the use of a wet scrubber system that controls both SO_2 and PM emissions may prove to be cost-effective and provide for substantial visibility improvement and should therefore be considered in Unit 4's BART analysis.

We are proposing to find that Entergy and ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) in determining BART for NO_X for both the natural gas and fuel oil firing scenarios and BART for SO_2 and PM for the fuel oil firing scenario for the Entergy Lake Catherine Unit 4. Specifically, we are proposing that ADEQ did not properly take into consideration ''the technology available'' and ''the costs of compliance.'' For the reasons identified above, we are proposing to disapprove ADEQ's BART determinations for PM, NO_X, and SO_2 under oil firing conditions, and NO_X under natural gas firing conditions. We are proposing to approve ADEQ's BART determination for the Entergy Lake Catherine Unit 4 for PM under gas firing conditions and ADEQ's decision to make no BART determination for SO_2 under gas firing conditions.

d. Entergy White Bluff Units 1, 2, and Auxiliary Boiler BART Determinations

The White Bluff Units 1 and 2 and the Auxiliary Boiler are BART-eligible sources. Units 1 and 2 are coal fired boilers with a maximum power rating of 850 MW each and a heat input rate of 8700 MMBtu/hr each. Units 1 and 2 are permitted to burn both sub-bituminous and bituminous coal as the primary fuel and No. 2 fuel oil or bio-diesel as the start-up fuel. The Auxiliary Boiler is a 183 MMBtu/hr boiler that is permitted to burn only No. 2 fuel oil or biodiesel. The Class I areas located within 300 km of the facility are Caney Creek, Upper Buffalo, and Hercules Glades. Since Units 1 and 2 are permitted to burn both bituminous and sub-bituminous coal, ADEQ made separate BART determinations for bituminous sub-bituminous coal firing.

Regarding BART for PM for Units 1 and 2, neither Entergy nor ADEQ performed a BART analysis to determine what retrofit controls are BART for Units 1 and 2. The source's rationale for this, which ADEQ agreed with, was its belief that most of the visibility-causing emissions from Units 1 and 2 are due to SO_2 and NO_X, and PM_{10} emissions are well-controlled with existing electrostatic precipitators (ESPs). We reviewed the CALPUFF visibility modeling submitted by ADEQ for Entergy White Bluff, and agree that PM emissions from the source have minimal visibility impacts at each Class I area within 300 km. Revisions to the Arkansas RH Rule (APC&E Commission Regulation 19, chapter 15) that were submitted to us by ADEQ on August 3, 2010, state the PM BART emission limit for White Bluff Units 1 and 2 is the existing PM emission limit in the air permit as of October 15, 2007. The federally enforceable operating air permit states the PM emissions from the two units are controlled with ESPs and requires that the two units comply with a PM emission standard of 0.10 lb/MMBtu.[51] Since we have found that the visibility impact of the source due to PM emissions alone is so minimal such that the installation of any additional PM controls on the units would likely achieve very low emissions reductions, have minimal visibility benefits, and not be cost-effective, we are proposing to approve ADEQ's determination that PM BART for both the bituminous and sub-bituminous coal firing scenarios is the existing PM emission limit for Units 1 and 2.

Regarding SO_2 BART for White Bluff Units 1 and 2, Entergy performed a BART analysis and determined that the presumptive limits of 0.15 lb/MMBtu for both the sub-bituminous and bituminous coal firing scenarios for SO_2 for Units 1 and 2 apply to the two units because they are greater than 200 MW each. Although Entergy performed a BART analysis for BART for SO_2, it considered only those control options that meet the presumptive limit of 0.15 lb/MMBtu, without considering whether a more stringent SO_2 emission limit is BART for Units 1 and 2. As stated elsewhere in this proposed rulemaking, the BART guidelines and the RHR require consideration of the most stringent control technology in the BART analysis. Because the control technology options considered in the BART analysis are capable of achieving a lower emission limit than the presumptive limit for this facility, and these controls are being currently used by similar facilities to control SO_2 emissions to an emission limit lower than the presumptive limit, consideration of these technologies and the lowest emission limit achievable must be included in the BART analysis.

In Step 1 of the SO_2 BART analysis for Units 1 and 2, Entergy identified two available options to control the units to the presumptive SO_2 limit: limestone forced oxidation (wet scrubbing) and lime spray dryer (dry scrubbing). Entergy did not identify either control option as technically infeasible. In Step

[51] ADEQ Operating Air Permit for Entergy Services Inc.—White Bluff Plant (Permit No. 0263–AOP–R6). This permit can be viewed at *http://www.adeq.state.ar.us/ftproot/pub/WebDatabases/PermitsOnline/Air/0263-AOP-R6.pdf.*

3 of the BART analysis, Entergy evaluated the control effectiveness of the two control options, stating the wet scrubber can achieve up to 95% control efficiency while the dry scrubber can achieve up to 92% control efficiency. In Step 4 of the BART analysis, Entergy evaluated the costs of compliance for the two control options. Entergy determined the installation of a wet scrubber would have an annualized cost of $17,023,735 with a cost effectiveness of $620/ton SO_2 removed at Unit 1 and an annualized cost of $17,159,021 with a cost-effectiveness of $620/ton SO_2 removed at Unit 2. Entergy also determined the installation of a dry scrubber would have an annualized cost of $34,035,909 with a cost effectiveness of $1280/ton SO_2 removed at Unit 1 and an annualized cost of $34,306,388 with a cost-effectiveness of $1280/ton SO_2 removed at Unit 2. In Step 5 of the BART analysis, Entergy evaluated the visibility impacts of the two control options. However, Entergy's modeling underestimated the visibility benefit anticipated from the use of wet or dry scrubbers because it modeled both control options at the same SO_2 emission rate of 0.15 lb/MMBtu, rather than at the achievable control effectiveness of 92% removal for dry scrubbing and 95% for wet scrubbing. We also note that Entergy deviated from the modeling protocol and used the 98th percentile (8th highest modeled day) in this analysis instead of the maximum modeled visibility impact. Entergy's post-control modeling showed that the visibility benefits for dry scrubbers and wet scrubbers is nearly the same (with dry scrubbing being slightly better due to a hotter plume and lower sulfuric acid emissions), while the annualized cost of a dry scrubber is nearly twice that of a wet scrubber. Entergy determined and ADEQ agreed that BART for SO_2 for Units 1 and 2 is installation and operation of a wet scrubber at each unit to achieve the presumptive BART limit of 0.15 lb/MMBtu for both the sub-bituminous and the bituminous coal firing scenarios. Entergy considered a wet scrubber achieving 0.15 lb/MMBtu to be the most stringent technology available. But as discussed elsewhere, wet scrubbers and dry scrubbers have been documented to achieve much lower emissions, including emissions as low as .065 lbs/MMBtu for dry scrubbers. Therefore, the evaluation is not acceptable. In addition, we note that the 0.15 lb/MMBtu presumptive BART limit established by ADEQ corresponds to 82% control removal of the wet scrubber at Unit 1 and 80% control removal at Unit 2, as indicated by ADEQ in the Arkansas RH SIP narrative.[52] Table A–1 in Appendix A of the BART analysis indicates the cost-effectiveness of installing and operating a wet scrubber is $620/ton SO_2 removed. Although Table A–1 indicates such cost-effectiveness value corresponds to operation of the wet scrubber at 95% control efficiency, neither ADEQ nor Entergy provided a breakdown of the cost estimates and we were therefore unable to verify whether it in fact corresponds to 95% control efficiency or if it corresponds to 80% control efficiency at Unit 2 and 82% control efficiency at Unit 1. Even if the $620/ton SO_2 removed cost-effectiveness value corresponds to only 82% control efficiency for Unit 1 and 80% control efficiency for Unit 2, we believe that the incremental cost of operating the wet scrubber at 95% vs. 80% and 82% control efficiency is relatively minimal, and is likely cost-effective. Since Entergy and ADEQ considered only the 0.15 lb/MMBtu SO_2 presumptive limit in the BART analysis for Units 1 and 2, even though a lower limit is technically achievable and more than likely cost-effective, we are proposing to disapprove ADEQ's determination that BART for SO_2 for Units 1 and 2 is the presumptive limit of 0.15 lb/MMBtu on a 30-day rolling average for both the sub-bituminous and bituminous coal firing scenarios.

Regarding NO_X BART for White Bluff Units 1 and 2, Entergy performed a BART analysis in which available combustion control technologies to control NO_X to the presumptive limit of 0.15 lb/MMBtu for the sub-bituminous coal-firing scenario and 0.28 lb/MMBtu for the bituminous coal-firing scenario were considered. As in the SO_2 BART analysis for Units 1 and 2, Entergy did not consider establishing NO_X BART emission limits more stringent than the NO_X presumptive limits. In Step 1 of the NO_X BART analysis, Entergy considered the following control options: boiler tuning, OFA, and LNB. Entergy did not evaluate post-combustion controls such as SCR and SNCR or any other NO_X control options capable of emission limits more stringent than the presumptive limits, when these are technically feasible and available and are currently being used by comparable facilities to control NO_X emissions at rates more stringent than the presumptive limit. Since Entergy did not identify the maximum control technology available as a control option in Step 1 of the BART analysis, the subsequent analysis in the remaining steps was incomplete. However, for the sake of providing a fuller picture of our evaluation of Entergy's BART analysis for NO_X for White Bluff Units 1 and 2, we discuss the remaining steps of the BART analysis.

Entergy did not identify any of the NO_X controls it listed in Step 1 of the BART analysis as being technically infeasible. In Step 3 of the BART analysis, Entergy evaluated the control effectiveness of the control options. Entergy determined boiler tuning will result in 37% control removal; a combination of boiler tuning and OFA will result in 53.6% control removal; and a combination of boiler tuning, OFA, and LNB will result in 69% control efficiency at each unit. In Step 4 of the BART analysis, Entergy evaluated the costs of compliance for the control options considered and determined that a combination of boiler tuning, OFA, and LNB has a control effectiveness of $463/ton NO_X removed for Unit 1 and $437/ton NO_X removed for Unit 2. We note Entergy's cost analysis of the NO_X control options included no documentation or detailed breakdown of the costs. We have no basis to verify the validity of neither the cost estimates nor Entergy and ADEQ's determination based on the analysis of cost estimation for BART. The basis for cost estimates must be documented either with data supplied by an equipment vendor (*i.e.,* budget estimates or bids) or by a referenced source. This was not done. Without either ADEQ or Entergy providing a breakdown of costs of material, labor, operation and maintenance, *etc,* we cannot verify the accuracy of Entergy's cost effectiveness determination. Furthermore, the cost-effectiveness analysis is problematic because Entergy assumed, and ADEQ agreed with, an 85% utilization of the two units when the units are capable of 100% utilization and there is no federally enforceable limit of 85% utilization in place.[53] Since the two units are technically and legally capable of operating at 100% utilization, a cost estimate assuming 85% utilization may underestimate the amount of emission reductions achieved by the controls and therefore under-represent the potential cost-effectiveness of such controls. In Step 5 of the BART analysis, Entergy evaluated the visibility impacts of the control options and subsequently determined that a combination of boiler

[52] See Table 9.3a of the Arkansas RH SIP.

[53] Based on operating hours provided by Entergy for Units 1 and 2, Unit 1 was operated 92.5% of the time in 2003, and Unit 2 was operated 92.7% of the time in 2004. See Table 2–1, under Section 2.2 of the BART analysis for Entergy White Bluff Units 1 and 2 (found in Appendix 9.3A of the RH SIP).

tuning, OFA, and LNB is BART for NO_X for Units 1 and 2, achieving an emission limit of 0.15 lb/MMBtu for the sub-bituminous coal firing scenario and 0.28 lb/MMBtu for the bituminous coal firing scenario. ADEQ agreed with the Entergy's determination.

As already explained in our evaluation of BART for SO_2 for Units 1 and 2, we disagree with Entergy and ADEQ's approach of not considering an emission limit more stringent than the presumptive limit when comparable facilities have used control technologies to reduce emissions below the presumptive limit. Also, as explained elsewhere in this notice, the BART Rule does not suggest the presumptive limits should be viewed as establishing a safe harbor from more stringent regulation under the BART provisions. ADEQ's CALPUFF pre-control modeling indicates the three subject to BART units at White Bluff together cause visibility impairment at Caney Creek, Upper Buffalo, Hercules Glade, Mingo, and Sipsey.[54] A considerable portion of this visibility impairment is due to NO_X emissions. ADEQ's post-control modeling indicates the three subject to BART units at White Bluff combined would still cause visibility impairment at all five Class I areas modeled (Caney Creek, Upper Buffalo, Hercules Glade, Mingo and Sipsey), and that a considerable portion of the post-control modeled visibility impairment is due to NO_X emissions. In light of the post-control modeling results, ADEQ and/or Entergy should have considered additional post-combustion controls, such as SNCR and SCR, that are capable of achieving NO_X emission limits well below the NO_X presumptive limits, and have been widely used by similar facilities to achieve emissions at rates below the presumptive limit. Therefore, we are proposing to disapprove ADEQ's determination that BART for NO_X for White Bluff Units 1 and 2 is 0.15 lb/MMBtu for the sub-bituminous coal firing scenario and 0.28 lb/MMBtu for the bituminous coal firing scenario.

With regard to the Auxiliary Boiler, neither ADEQ nor Entergy conducted a BART analysis that considered the statutory factors states are required to consider in determining what level of control is BART for a source, whether this be an emission limit or a work practice standard. The Arkansas RH SIP narrative states ADEQ decided to establish work practice standards for this source pursuant to 40 CFR 51.308(e)(1)(iii), rather than establish BART emission limits for SO_2, NO_X, and PM. APC&E Commission Regulation 19, Chapter 15, established that BART for the Auxiliary Boiler is a restriction to operate no more than 4360 hours annually. Since ADEQ's pre and post-control visibility modeling shows the visibility impact on surrounding Class I areas of all three units at the facility combined, we are not able to assess the visibility impact on Class I areas of the Auxiliary Boiler alone. The operating permit indicates the Auxiliary Boiler combusts No. 2 fuel oil or biodiesel to provide steam for Unit 1 and 2 start-up activities. The restriction established by ADEQ as BART would allow the Auxiliary Boiler to operate 50% of the time on an annual basis. In practice, an auxiliary boiler that is only needed for start-up is typically operated much less than that. We are proposing to find that ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) because neither ADEQ nor Entergy performed a BART analysis for the Auxiliary Boiler for their chosen work practice standard. We are proposing to disapprove ADEQ's determination that BART for the White Bluff Auxiliary Boiler is a restriction to operate no more than 4360 hours annually.

e. Domtar Power Boilers No. 1 and 2 BART Determinations

The Domtar Power Boilers No. 1 and 2 are BART-eligible sources. The Power Boilers generate steam and electricity for the other processes within the Domtar kraft pulp mill. The No. 1 Power Boiler has a heat input rating of 580 MMBtu/hr and is permitted to burn bark, wood waste, municipal yard waste, recycled sanitary products composed of cellulose and polypropylene, pelletized paper fuel (PPF), No. 6 fuel oil, used oil generated on site, reprocessed fuel oil, tire derived fuel (TDF), and natural gas. The No. 1 Power Boiler is equipped with a traveling grate, a combustion air system, and a wet ESP for removal of PM emissions. According to the operating air permit, the No. 1 Power Boiler's permitted emission rate for PM/PM_{10} is 0.07 lb/MMBtu. The operating air permit provides that the sulfur content of the fuel oil used at the No.1 Power Boiler shall not exceed 3.0% by weight and that the No. 1 Power Boiler shall not use more than 2,700,000 gallons of fuel oil for any consecutive 12-month period. The permit also limits the total amount of TDF used at the Power Boilers No. 1, 2, and 3 combined to 220 tons in any 24-hour period.

The No. 2 Power Boiler has a heat input rating of 820 MMBtu/hr and burns primarily pulverized bituminous coal, but is also permitted to burn non-condensable gases (NCGs), bark and wood chips used to absorb oil spills, wood waste, municipal yard waste, natural gas, used oil generated on site, recycled sanitary products based on cellulose and polypropylene, No. 6 fuel oil, reprocessed fuel oil, TDF, and petroleum coke. The No. 2 Power Boiler is equipped with a traveling grate, combustion air system including OFA, multiclones for removal of PM emissions, and two venturi scrubbers in parallel for removal of remaining PM emissions and SO_2. According to the operating air permit, the No. 2 Power Boiler's permitted emission rate for PM/PM_{10} is 0.1 lb/MMBtu.

Regarding BART for PM, Domtar stated the No. 1 and 2 Power Boilers were at the time subject to the Boiler Maximum Achievable Control Technology (MACT) PM emission standard of 0.07 lb/MMBtu. A wet ESP was installed at the No. 1 Power Boiler to meet the 0.07 lb/MMBtu Boiler MACT PM emission standard. Domtar also stated that the No. 2 Power Boiler's existing wet scrubber is capable of meeting the Boiler MACT PM emission standard. Domtar noted that in the BART Guidelines, EPA encourages the use of streamlined approaches for BART determinations and elected to forego a BART analysis and to presumptively rely on the 0.07 lb/MMBtu Boiler MACT PM emission standard in existence at the time to meet the BART PM requirements for both the No. 1 and No. 2 Power Boilers. We note the BART Guidelines (Appendix Y to Part 51) provide that for VOC and PM sources subject to MACT standards, States may streamline the BART analysis by including a discussion of the MACT controls and whether any major new technologies have been developed subsequent to the MACT standards. The guidelines provide that unless there are new technologies subsequent to the MACT standards which would lead to cost-effective increases in the level of control, sources may rely on the MACT standards for purposes of BART.

Concerning Power Boiler No. 1, Domtar provided a discussion of other PM control technologies available at the time, and determined that a wet ESP with a PM emission limit of 0.07 lb/MMBtu on a 30-day rolling average is BART for Power Boiler No. 1. ADEQ agreed with Domtar's determination. We agree that ADEQ's determination for BART for PM for Power Boiler No. 1 is consistent with the BART Guidelines and are proposing to approve it.

[54] The maximum modeled pre-control Δdv values at surrounding Class I areas due to the three subject-to-BART units at White Bluff are: Caney Creek= 8.816 Δdv; Upper Buffalo= 7.750 Δdv; Hercules Glade=6.314 Δdv; Mingo=5.617; and Sipsey=5.843. See Appendix 9.2C of the Arkansas RH SIP.

Concerning Power Boiler No. 2, Domtar stated that the unit was subject to the Boiler MACT[55] PM emission standard in existence at the time (0.07 lb/MMBtu), and indicated its intent to presumptively rely on such standard to meet BART PM requirements for Power Boiler No. 2. However, instead of adopting 0.07 lb/MMBtu as the BART PM emission limit for Power Boiler No. 2, ADEQ adopted 0.10 lb/MMBtu as the BART PM emission limit. Since ADEQ did not select the Boiler MACT PM emission standard current at the time the BART determination was made as the BART PM emission limit for Power Boiler No. 2, ADEQ cannot elect to take the streamlined approach provided in the BART Guidelines. If ADEQ chooses to take the streamlined approach provided in the BART Guidelines, ADEQ must select the Boiler MACT PM standard if it determines there are no new and cost-effective technologies or available upgrades developed subsequent to the MACT standard. Otherwise, ADEQ and/or Domtar must perform a complete BART analysis that considers the statutory factors under section 51.308(e)(ii)(A) to determine BART for PM for Power Boiler No. 2. Furthermore, ADEQ's pre-control visibility modeling indicates a considerable portion of the combined visibility impact of No. 1 and 2 Power Boilers at Caney Creek is due to PM emissions.[56] Therefore, we are proposing to disapprove ADEQ's determination that BART for PM_{10} for Power Boiler No. 2 is 0.10 lb/MMBtu on a 30-day rolling average, and we are proposing to approve ADEQ's determination that BART for PM_{10} for Power Boiler No. 1 is 0.07 lb/MMBtu on a 30-day rolling average.

Regarding BART for SO_2 for Power Boiler No. 1, Domtar noted pre-combustion controls such as fuel switching/blending and fuel cleaning are ineffective, as wood has low sulfur content. Domtar also noted post-combustion controls such as flue gas desulfurization (FGD) and (*i.e.,* wet and dry scrubbers) have not been installed on wood-fired boilers because of the relatively low SO_2 emissions from wood combustion. Domtar determined that due to the low sulfur content of wood, SO_2 emissions from wood combustion are inherently low and ''have a negligible impact on visibility impairment.'' Domtar determined SO_2 BART for Power Boiler No. 1 is no additional SO_2 controls beyond the existing fuel restrictions (fuel oil with a maximum 3.0% sulfur content and a usage limitation of 2,700,000 gallons of fuel oil per consecutive 12-month period) are necessary. ADEQ agreed with Domtar's determination and decided that an emission limit of 1.12 lb/MMBtu on a 30-day rolling average is BART for SO_2 for Power Boiler No. 1. We note that ADEQ's CALPUFF pre-control modeling demonstrates the No. 1 Power Boiler emits more than one-third of the total modeled emissions of SO_2 from the two sources.

We agree that due to the low sulfur content of wood, SO_2 emissions from wood-fired boilers are generally relatively low. Table 1.6–2 of EPA's *Compilation of Air Pollutant Emission Factors* indicates the combustion of wood waste has a typical SO_2 emission rate of 0.025 lb/MMBtu.[57] In light of this, we question the appropriateness of an SO_2 emission limit of 1.12 lb/MMBtu for Power Boiler No. 1. Neither ADEQ nor Domtar provided any support for this emission limit. Domtar stated that approximately 75 percent of the heat input for Power Boiler No. 1 is supplied by bark. A unit combusting primarily bark should be capable of achieving an SO_2 emission rate much lower than 1.12 lb/MMBtu. The facility's current permit for this unit limits its annual SO_2 emissions to 214 tons per year (tons/year), which is a low figure. Therefore, there appears to be a mismatch between ADEQ's relatively high BART SO_2 emission limit and what the facility actually needs, based on its current permit. As part of its BART analysis, ADEQ and/or Domtar should have conducted a fuel inventory of this boiler in order to explore this issue. Other sources of potential sulfur emissions should have been investigated, including emissions resulting from burning fuel oil and TDF. ADEQ should also have considered lowering the sulfur content of fuel oil burned at the source, and/or lowering the limit on fuel oil usage. If Power Boiler No. 1 truly needs such a high SO_2 emission limit, then ADEQ and/or the Domtar should have investigated the feasibility, effectiveness, and cost of SO_2 controls. Therefore, we are proposing to find that ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) in determining BART. We are proposing to disapprove ADEQ's determination that BART for SO_2 for Power Boiler No. 1 is 1.12 lb/MMBtu on a 30-day rolling average.

Regarding BART for SO_2 for Power Boiler No. 2, neither ADEQ nor Domtar performed a BART analysis that considered the statutory factors under section 51.308(e)(ii)(A). Domtar stated the unit is equipped with a wet scrubber for control of SO_2 and PM emissions. According to Domtar, the existing wet scrubber currently achieves an SO_2 control efficiency of approximately 90%. Domtar indicated that the BART Guidelines provide an option to skip the comprehensive BART analysis for subject to BART units already equipped with the most stringent controls available, including all possible improvements to control devices, as long as these are made federally enforceable for the purpose of implementing BART for the source. Domtar stated that since wet scrubbing is the most effective method of controlling SO_2 emissions and it has not identified any feasible upgrades to the existing wet scrubber, no BART analysis is necessary. ADEQ agreed with Domtar, and determined that no additional SO_2 removal is needed for the No. 2 Power Boiler, and BART for SO_2 is 1.20 lb/MMBtu on a 30-day rolling average using the existing wet scrubber.

We agree that the BART Guidelines allow sources to forego the BART analysis when the source already has the most stringent controls available in place and all possible improvements to control devices have been made. However, we disagree that a 1.20 lb/MMBtu SO_2 emissions rate corresponds to the most stringent control available. We note FGD systems are capable of SO_2 reduction efficiencies up to 98%.[58] Therefore, the 90% reduction efficiency claimed by Domtar does not correspond to the highest SO_2 control efficiency wet scrubbers are capable of achieving. The highest SO_2 control efficiency issue aside, although Domtar stated it did not identify any feasible upgrades to the existing wet scrubber, it provided no documentation of what upgrades were considered and why they were found to be technical infeasible. In considering all possible improvements to the scrubber, Domtar should have evaluated options that not only improve the design removal efficiency of the scrubber vessel itself, but also considered upgrades that can improve the overall SO_2 removal efficiency of the scrubber system. For example, the

[55] The MACT standards are part of the National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP), provided under 40 CFR 63.

[56] ADEQ's pre-control modeling files are found in Appendix 9.2B of the Arkansas RH SIP. Since ADEQ's visibility modeling shows the visibility impact of No. 1 and 2 Power Boilers combined, we were unable to assess the visibility impact of No. 2 Power Boiler individually on surrounding Class I areas.

[57] Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources, AP–42, 5th Edition, January 1995.

[58] See EPA's *Air Pollution Control Fact Sheet* on FGD control technology, available at *http://www.epa.gov/ttn/catc/dir1/ffdg.pdf.*

BART Guidelines state that improving maintenance practices, adjusting scrubber chemistry, and increasing auxiliary equipment redundancy are some ways to improve average SO_2 removal efficiencies. For the reasons discussed above, we are proposing to find that ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) in determining BART for SO_2 for Power Boiler No. 2. We are proposing to disapprove ADEQ's determination that BART for SO_2 for the No. 2 Power Boiler is 1.20 lb/MMBtu on a 30-day rolling average using the existing wet scrubber.

Regarding BART for NO_X for Power Boilers No. 1 and 2, Domtar performed a BART analysis to determine what controls are BART for the two boilers. In Step 1 of the NO_X BART analysis, Domtar identified the following control technologies: boiler tuning/optimization, fuel blending, FGR, LNB, OFA, SCR, SNCR, and reburning/methane de-NO_X. Domtar stated the source has employed and intends to continue to employ the latest boiler optimization and tuning techniques, and that such control technologies are considered part of the base case for Power Boilers No. 1 and 2. Similarly, Domtar explained it historically mixes 10–15% (heat input basis) wood with coal in the No. 2 Power Boiler and therefore fuel blending is considered part of the base case for the No. 2 Power Boiler. In Step 3 of the BART analysis, Domtar evaluated the technical feasibility of each control option. Domtar explained that since wood is inherently low in nitrogen content, fuel blending is not technically feasible for wood-fired boilers, and therefore eliminated this as a control option for Power Boiler No. 1. Regarding FGR, Domtar asserted that only thermal NO_X can be controlled by FGR. As most NO_X emissions from the No. 1 and No. 2 Power Boilers are due to fuel NO_X rather than thermal NO_X, Domtar determined FGR is technically infeasible for both power boilers. Domtar stated that combustion modification with LNB is used in both gas/oil-fired and coal fired units, but is not used for wood-fired boilers. Therefore, Domtar determined use of LNB is technically infeasible for Power Boiler No. 1. Regarding use of OFA, Domtar stated the source was informed by one OFA vendor that while OFA results in decreased NO_X emissions, the primary purpose is combustion optimization, and implementation of OFA can actually increase NO_X emissions in certain circumstances. Based on this, Domtar determined an OFA system upgrade at Power Boilers No. 1 and 2 is technically infeasible and eliminated this as a control option for both units in question. Domtar determined that methane de-NO_X is the only technically feasible NO_X control option for Power Boiler No. 1 and methane de-NO_X and LNB are the only two technically feasible NO_X control options for Power Boiler No. 2. In so doing, Domtar determined that SCR and SNCR are technically infeasible control options for No. 1 and 2 Power Boilers because they are not suited for power boilers that experience wide temperature variances and high load swings. We note a review of the RACT/BACT/LAER Clearinghouse (Process types 11.120 and 11.190) indicates there are several wood-fired utility boilers that employ SNCR. In particular, a similar source, the bark boiler at Temple Inland Kraft Linerboard Mill in Orange, Texas, employs SNCR, Low Excess Air (LEA), and low NO_X gas burners.[59] The Temple Inland Kraft boiler has a NO_X emission limit of 0.166 lb/MMBtu on a 30 day rolling average. Like the Domtar Power Boilers No. 1 and 2, the Temple Inland Kraft boiler exhibits load swing. We also note there are other similarities in the operating parameters of the bark boiler at Temple Inland Kraft and Power Boiler No. 1 (the bark boiler) at Domtar. Like Power Boiler No. 1 at Domtar, the bark boiler at Temple Inland Kraft is permitted to burn, among other fuel sources, bark/wood biomass, natural gas, and tire-derived fuel. The Temple Inland Kraft bark boiler has a maximum heat input rating of 656 MMBtu/hr, while Domtar Power Boiler No. 1 has a maximum heat input rating of 580 MMBtu/hr. In conducting its BART analysis, ADEQ and/or Domtar should have more carefully considered the use of post-combustion control technologies, such as SNCR, for both power boilers at Domtar, since SNCR is a control technology that has been used at similar facilities to control NO_X emissions. Because ADEQ eliminated some of the control options as being technically infeasible in Step 2 of the BART analysis, the subsequent analysis in remaining steps was incomplete. However, for the sake of providing a fuller picture of our evaluation of Domtar's BART analysis for NO_X for Domtar Power Boilers No. 1 and 2, we discuss the remaining steps of the BART analysis.

In Step 3 of the BART analysis, Domtar evaluated the control effectiveness of the control options it considered technically feasible. Domtar determined that methane de-NO_X has a potential control efficiency of 50%, whereas LNB has a potential control efficiency of 30%. In Step 4 of the BART analysis, Domtar evaluated the cost of compliance for each control option. Domtar determined the cost-effectiveness of methane de-NO_X is \$7,262/ton NO_X removed at Power Boiler No. 1 and \$4,259/ton NO_X removed at Power Boiler No. 2, while the cost-effectiveness of LNB is \$1,465/ton NO_X removed at Power Boiler No. 1. Domtar eliminated consideration of methane de-NO_X at Power Boilers No. 1 and 2 due to its high cost. Since Domtar eliminated the only control option considered for Power Boiler No. 1 prematurely (before evaluating visibility impacts), it determined, and ADEQ agreed, that there are no NO_X controls available for Power Boiler No. 1 and ADEQ established a BART NO_X emission limit of 0.46 lb/MMBtu on a 30-day rolling average for Power Boiler No. 1. This would result in no additional NO_X emission reductions at Power Boiler No. 1 beyond baseline conditions.

Also based on the cost-effectiveness analysis, Domtar determined that BART for Power Boiler No. 2 is LNB and ADEQ established a BART NO_X emission limit of 0.45 lb/MMBtu on a 30-day rolling average for Power Boiler No. 2. After making BART determinations for the No. 1 and 2 Power Boilers, ADEQ modeled the visibility impacts of the controls it selected as BART. We note Domtar and ADEQ's approach for making NO_X BART determinations for the No. 1 and 2 Power Boilers is flawed, as the RHR and the BART Guidelines provide that the visibility impacts of all technically feasible control options, which corresponds to Step 5 of the BART analysis, must be considered before a BART determination is made. ADEQ and Domtar eliminated methane de-NO_X in the BART analysis for Power Boilers No. 1 and 2 due to high cost before evaluating the visibility impacts of this control option. Thereby, ADEQ modeled only the visibility impacts of LNB for Power Boiler No. 2.

ADEQ stated its post-control visibility modeling demonstrates the BART determinations for PM, SO_2, and NO_X for Power Boilers No. 1 and 2 will result in a combined visibility improvement of 9.9% at Caney Creek and 12.9% at Upper Buffalo.[60] We note this is very

[59] See the docket for this rulemaking to view the Title V permit for the Temple Inland Kraft Linerboard Mill.

[60] ADEQ's post-control modeling, showing the visibility improvement resulting from BART controls, demonstrates that the visibility impact of

Continued

minimal visibility improvement and that there is ample room for the additional visibility improvement that would result from BART controls more stringent than those selected by ADEQ and Domtar.

We are proposing to find that ADEQ did not properly follow the requirements of section 51.308(e)(1)(ii)(A) in determining NO_X BART for Power Boilers No.1 and 2. Specifically, we are proposing that ADEQ did not properly take into consideration ''the technology available'' and ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.'' We disagree with Domtar and ADEQ's assessment that use of SNCR at the two power boilers is technically infeasible. In addition, ADEQ did not model the visibility impacts of all technically feasible control options before making NO_X BART determinations. For these reasons, we are proposing to disapprove ADEQ's determination that BART for NO_X for Power Boiler No. 1 is a NO_X emission limit of 0.46 lb/MMBtu (which would achieve no NO_X emission reductions beyond the baseline) and that BART for NO_X for Power Boiler No. 2 is a NO_X emission limit of 0.45 lb/MMBtu (achieved by use of LNB).

f. ADEQ BART Results and Summary

We have reviewed ADEQ's BART determinations for the sources listed in Table 3, above. For the reasons discussed above, and as discussed in more detail in the TSD, we are proposing to find that ADEQ has partially satisfied the BART requirement of section 51.308(e). We are proposing to find that the BART determinations listed in Table 4 satisfy the BART requirement of section 51.308(e). We are proposing to find that the BART determinations listed in Table 5 do not satisfy the BART requirement of section 51.308(e). We are also proposing to find that the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill are subject to BART and require a full BART analysis to satisfy the BART requirement of section 51.308(e).

TABLE 4—BART DETERMINATIONS SATISFYING SECTION 51.308(e)

Facility name	BART emission unit	Pollutant		BART emission limit [61]
American Electric Power Flint Creek Power Plant	Boiler No. 1	PM_{10}		existing PM emission limit (0.1 lb/MMBtu).
Entergy Lake Catherine Plant	Unit 4	natural gas firing.	SO_2	No BART Determination.
			PM_{10}	existing PM emission limit (45 lb/hr).
Entergy White Bluff Plant	Unit 1	bituminous coal firing.	PM_{10}	existing PM emission limit (0.1 lb/MMBtu).
		sub-bituminous coal firing.	PM_{10}	existing PM emission limit (0.1 lb/MMBtu).
	Unit 2	bituminous coal firing.	PM_{10}	existing PM emission limit (0.1 lb/MMBtu).
		sub-bituminous coal firing.	PM_{10}	existing PM emission limit (0.1 lb/MMBtu).
Domtar Ashdown Mill	No. 1 Power Boiler	PM_{10}		0.07 lb/MMBtu.

TABLE 5—BART DETERMINATIONS NOT SATISFYING SECTION 51.308(e)

Facility name	BART emission unit	Pollutant	BART emission limit [62]
Arkansas Electric Cooperative Corporation Carl E. Bailey Generating Station.	Unit 1	SO_2	Use of fuel oil with 1% sulfur content.
		NO_X	No BART Determination.
		PM	No BART Determination.
Arkansas Electric Cooperative Corporation John L. McClellan Generating Station.	Unit 1	SO_2	Use of fuel oil with 1% sulfur content.
		NO_X	No BART Determination.
		PM	No BART Determination.
American Electric Power Flint Creek Power Plant	Boiler No. 1	SO_2	0.15 lb/MMBtu.

Power Boilers No. 1 and 2 combined will be 2.038 Δdv at Caney Creek and 1.029 Δdv at Upper Buffalo after ADEQ's BART controls are put in place.

[61] Emission limits are based on a 30-day rolling average.

TABLE 5—BART DETERMINATIONS NOT SATISFYING SECTION 51.308(e)—Continued

Facility name	BART emission unit	Pollutant		BART emission limit [62]
		NO_X		0.23 lb/MMBtu.
Entergy Lake Catherine Plant	Unit 4	natural gas firing.	NO_X	0.15 lb/MMBtu.
		fuel oil firing	SO_2	0.562 lb/MMBtu.
			NO_X	0.25 lb/MMBtu.
			PM	0.037 lb/MMBtu.
Entergy White Bluff Plant	Unit 1	bituminous coal firing.	SO_2	0.15 lb/MMBtu.
			NO_X	0.28 lb/MMBtu.
		sub-bituminous coal firing.	SO_2	0.15 lb/MMBtu.
			NO_X	0.15 lb/MMBtu.
	Unit 2	bituminous coal firing.	SO_2	0.15 lb/MMBtu.
			NO_X	0.28 lb/MMBtu.
		sub-bituminous coal firing.	SO_2	0.15 lb/MMBtu.
			NO_X	0.15 lb/MMBtu.
	Auxiliary Boiler	All		Boiler to be operated no more than 4360 hrs annually.
Domtar Ashdown Mill	No. 1 Power Boiler	SO_2		1.12 lb/MMBtu.
		NO_X		0.46 lb/MMBtu.
	No. 2 Power Boiler	SO_2		1.2 lb/MMBtu.
		NO_X		0.45 lb/MMBtu.
		PM_{10}		0.1 lb/MMBtu.

4. Arkansas' Regional Haze Rule

APC&E Commission Regulation 19, Chapter 15 requires each source subject to BART to install and operate BART no later than 6 years after the effective date of ADEQ's regulation or 5 years after we approve this RH SIP, which ever comes first.[63]

ADEQ originally submitted Arkansas' RH Rule, the APC&E Commission Regulation 19, Chapter 15, along with the Arkansas RH SIP, which we received on September 23, 2008. On August 3, 2010, we received a SIP revision submittal from ADEQ revising several chapters of APC&E Commission Regulation 19, including chapter 15. The revisions to Chapter 15 of APC&E Commission Regulation 19 that we received on August 3, 2010 are mostly non-substantive amendments that revise the original version of the rule we received on September 23, 2008. Therefore, in this proposed rulemaking we are proposing to take action on the version of Chapter 15 of APC&E Regulation 19 contained in the submittal we received on September 23, 2008, as revised by the submittal received on August 3, 2010. The only portion of the August 3, 2010 SIP submittal we are proposing to take action on in this rulemaking is that portion revising chapter 15 of APC&E Regulation 19. In this proposed rulemaking, we are not proposing to take action on the portions of the August 3, 2010 SIP submittal that revise other chapters of APC&E Commission Regulation 19, as those chapters are not related to regional haze. We will take action on the revisions to other chapters of APC&E Commission Regulation 19 at a later time.

We are proposing to partially approve and partially disapprove chapter 15 of APC&E Commission Regulation 19. We are proposing to approve those portions of chapter 15 of APC&E Commission Regulation 19 that incorporate the BART determinations we are proposing to approve and those portions that are consistent with our overall action on the Arkansas RH SIP. Specifically, we are proposing to approve the following sections of chapter 15 of APC&E Commission Regulation 19: Reg. 19.1501, which establishes the purpose

[62] Emission limits are based on a 30-day rolling average.

[63] See Arkansas Pollution Control and Ecology Commission Reg. 19.1504(B).

of the rule; Reg. 19.1502, which incorporates by reference the definitions contained in 40 CFR 51.301, as in effect on June 22, 2007; Reg. 19.1503, which identifies the State's BART-eligible sources; the portion of Reg. 19.1504(A) that identifies AECC Bailey Generating Station (Unit 1), AECC McClellan Generating Station (Unit 1), Domtar Ashdown Mill (Power Boilers No. 1 and 2), Lake Catherine (Unit 4), White Bluff (Units 1, 2, and the Auxiliary Boiler), and AEP Flint Creek (Boiler No. 1) as subject to BART sources; Reg. 19.1504(B), which requires each source subject to BART to install and operate BART as expeditiously as possible, but no later than 6 years after the effective date of the State's regulation or 5 years after EPA approval of the RH SIP (whichever comes first);[64] Reg. 19.1504(C), which requires each source subject to BART to maintain the control equipment required by chapter 15, and establish procedures to ensure such equipment is properly operated and maintained; Reg. 19.1505(A)(3), which establishes PM BART for AEP Flint Creek Power Plant, Boiler 1; Reg. 19.1505(D)(3), which establishes PM BART for Domtar Ashdown Mill, Power Boiler No. 1; Reg. 19.1505(F)(3), which establishes PM BART (bituminous coal) for Entergy White Bluff, Unit 1; Reg. 19.1505(G)(3), which establishes PM BART (sub-bituminous coal) for Entergy White Bluff, Unit 1; Reg. 19.1505(I)(3), which establishes PM BART (bituminous coal) for Entergy White Bluff, Unit 2; Reg. 19.1505(J)(3), which establishes PM BART (sub-bituminous coal) for Entergy White Bluff, Unit 2; Reg. 19.1505(M)(2), which establishes PM BART (natural gas) for Entergy Lake Catherine Unit 4; Reg.19.1506, which provides the compliance provisions for the subject to BART sources; and Reg. 19.1507, which provides that the Part 70 permit of each facility subject to BART shall be subject to re-opening.

We are proposing to disapprove the portion of Chapter 15 of APC&E Commission Regulation 19 that fails to identify the 6A and 9A Boilers at the Georgia-Pacific Mill as subject to BART sources, and the portions that incorporate the State's BART determinations we are proposing to disapprove. Specifically, we are proposing to disapprove the following sections of Chapter 15 of the Arkansas Pollution Control and Ecology Commission Regulation 19: the portion of Reg. 19.1504(A) that fails to identify the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill as subject to BART sources; Reg. 19.1505(A)(1), which establishes SO_2 BART for AEP Flint Creek Power Plant, Boiler 1; Reg. 19.1505(A)(2), which establishes NO_X BART for AEP Flint Creek Power Plant, Boiler 1; Reg. 19.1505(B), which establishes SO_2 BART for AECC Bailey Generating Station, Unit 1; Reg. 19.1505(C), which establishes SO_2 BART for AECC McClellan Generating Station, Unit 1; Reg 19.1505(D)(1), which establishes SO_2 BART for Domtar Ashdown Mill, Power Boiler No. 1; Reg. 19.1505(D)(2), which establishes NO_X BART for Domtar Ashdown Mill, Power Boiler No. 1; Reg. 19.1505(E)(1), which establishes SO_2 BART for Domtar Ashdown Mill, Power Boiler No. 2; Reg. 19.1505(E)(2), which establishes NO_X BART for Domtar Ashdown Mill, Power Boiler No. 2; Reg. 19.1505(E)(3), which establishes PM BART for Domtar Ashdown Mill, Power Boiler No. 2; Reg. 19.1505(F)(1), which establishes SO_2 BART (bituminous coal) for Entergy White Bluff, Unit 1; Reg. 19.1505(F)(2), which establishes NO_X BART (bituminous coal) for Entergy White Bluff, Unit 1; Reg. 19.1505(G)(1), which establishes SO_2 BART (sub-bituminous coal) for Entergy White Bluff, Unit 1; Reg. 19.1505(G)(2), which establishes NO_X BART (sub-bituminous coal) for Entergy White Bluff, Unit 1; Reg. 19.1505(H), which provides that when burning a mix of bituminous and sub-bituminous coal at White Bluff Unit 1, the NO_X BART limits shall be prorated using the percentage of each coal being used; Reg. 19.1505(I)(1), which establishes SO_2 BART (bituminous coal) for Entergy White Bluff, Unit 2; Reg. 19.1505(I)(2), which establishes NO_X BART (bituminous coal) for Entergy White Bluff, Unit 2; Reg. 19.1505(J)(1), which establishes SO_2 BART (sub-bituminous coal) for Entergy White Bluff, Unit 2; Reg. 19.1505(J)(2), which establishes NO_X BART (sub-bituminous coal) for Entergy White Bluff, Unit 2; Reg. 19.1505(K), which provides that when burning a mix of bituminous and sub-bituminous coal at White Bluff Unit 2, the NO_X BART limits shall be prorated using the percentage of each coal being used; Reg. 19.1505(L), which establishes BART for Entergy White Bluff, Auxiliary Boiler; Reg. 19.1505(M)(1), which establishes NO_X BART (natural gas) for Entergy Lake Catherine Unit 4; Reg. 19.1505(N)(1), which establishes SO_2 BART (fuel oil) for Entergy Lake Catherine Unit 4; Reg. 19.1505(N)(2), which establishes NO_X BART (fuel oil) for Entergy Lake Catherine Unit 4; and Reg. 19.1505(N)(3), which establishes PM BART (fuel oil) for Entergy Lake Catherine Unit 4.

E. Long-Term Strategy

As described in section IV.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. Arkansas' LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the state from the end of the baseline period starting in 2004 until 2018. The Arkansas LTS was developed by ADEQ, in coordination with the CENRAP RPO, through an evaluation of the following components: (1) Construction of a CENRAP 2002 baseline emission inventory; (2) construction of a CENRAP 2018 emission inventory, including reductions from CENRAP member state controls required or expected under federal and state regulations, (including BART); (3) modeling to determine visibility improvement and apportion individual state contributions; (4) state consultation; and (5) application of the LTS factors.

1. Emissions Inventories

Section 51.308(d)(3)(iii) requires that Arkansas document the technical basis, including modeling, monitoring and emissions information, on which it relied upon to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. Arkansas must identify the baseline emissions inventory on which its strategies are based. Section 51.308(d)(3)(iv) requires that Arkansas identify all anthropogenic sources of visibility impairment considered by the state in developing its long-term strategy. This includes major and minor stationary sources, mobile sources, and area sources. Arkansas met these requirements by relying on technical analyses developed by its RPO, CENRAP, and approved by all state participants, as described below.

The emissions inventory used in the RH technical analyses was developed by CENRAP with assistance from Arkansas. ADEQ provided a statewide emissions inventory for 2002- representing the mid-point of the 2000–2004 baseline period, and a projected emissions inventory for 2018, the end of the first 10-year planning period. The 2018 inventory is based on visibility modeling conducted by CENRAP. The 2018 emissions inventory was

[64] On March 26, 2010, the Arkansas Pollution Control & Ecology Commission, Arkansas' rulemaking body, granted all Arkansas subject-to-BART sources a variance from the compliance deadline imposed by the State's RH Rule, such that these sources are now required to comply with BART requirements no later than 5 years after EPA approval of the RH SIP.

developed by projecting 2002 emissions and applying reductions expected from federal and state regulations affecting the emissions of the visibility-impairing pollutants NO_X, PM, SO_2, and VOCs.

a. Arkansas' 2002 Emission Inventory

ADEQ and CENRAP developed an emission inventory for five inventory source classifications: Point, area, non-road and on-road mobile sources, and biogenic sources for the baseline year of 2002. Arkansas' 2002 emissions inventory provides estimates of annual emissions for haze producing pollutants by source category as summarized in Table 6, based on information in section 7.0 of Arkansas' RH SIP.

TABLE 6—ARKANSAS' 2002 EMISSIONS INVENTORY

[Tons/year]

	SO_2	NH_3	NO_X	VOCs	PM_{10}	$PM_{2.5}$
Point	92,205	1	72,419	44,329	12,406	7,837
Area	29,889	152,436	27,450	93,548	148,433	68,000
Non-road mobile	5,490	49	62,472	54,785	5,673	5,220
On-road mobile	3,902	2,480	141,894	48,599	3,784	3,021
Biogenic	0	0	18,960	1,385,666	0	0
Total	131,485	154,967	323,195	1,626,927	170,296	84,078

See the TSD for details on how the 2002 emissions inventory was constructed. We are proposing that Arkansas' 2002 emission inventory is acceptable.

b. Arkansas' 2018 Emission Inventory

In constructing Arkansas' 2018 emission inventory, ADEQ used a combination of our Economic Growth Analysis System (EGAS 6), our mobile emissions factor model (MOBILE 6), our off-road emissions factor model (NONROAD), and the Integrated Planning Model (IPM) for electric generating units. CENRAP developed emissions for five inventory source classifications: point, area, non-road and on-road mobile sources, and biogenic sources. CENRAP used the 2002 emission inventory, described above, to estimate emissions in 2018. All control strategies expected to take effect prior to 2018 are included in the projected emission inventory. Arkansas' 2018 emissions inventory provides estimates of annual emissions for haze producing pollutants by source category as summarized in Table 7, based on information in section 7.0 of the Arkansas RH SIP.

TABLE 7—ARKANSAS' 2018 EMISSIONS INVENTORY

	SO_2	NH_3	NO_X	VOCs	PM_{10}	$PM_{2.5}$
Point	106,461	2,575	71,107	55,603	19,799	13,775
Area	31,169	201,722	31,531	107,387	148,592	69,585
Non-road mobile	211	49	34,305	31,475	3,678	3,387
On-road mobile	442	3,412	33,640	19,924	949	949
Biogenic	0	0	18,960	1,385,666	0	0
Total	138,283	207,758	189,542	1,600,055	173,019	87,695

See the TSD for details on how the 2018 emissions inventory was constructed. CENRAP and ADEQ used this and other state's 2018 emission inventories to construct visibility projection modeling for 2018. We are proposing that Arkansas' 2018 emission inventory is acceptable.

2. Visibility Projection Modeling

CENRAP performed modeling for the RH LTS for its member states, including Arkansas. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. CENRAP used (1) The Mesoscale Meteorological Model (MM5) meteorological model, (2) the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system to generate hourly gridded speciated emission inputs, (3) the Community Multiscale Air Quality (CMAQ) photochemical grid model and (4) the Comprehensive Air Quality model with extensions (CAMx), as a secondary corroborative model. CAMx was also utilized with its Particulate Source Apportionment Technology (PSAT) tool to provide source apportionment for both the baseline and future case visibility modeling.

The photochemical modeling of RH for the CENRAP states for 2002 and 2018 was conducted on the 36-km resolution national regional planning organization domain that covered the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. The CENRAP states' modeling was developed consistent with our guidance.[65]

CENRAP examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the RH assessment of the LTS and for use in the modeling assessment. The 2002 modeling efforts were used to evaluate air quality/visibility modeling for a historical episode—in this case, for calendar year 2002—to demonstrate the suitability of the modeling systems for subsequent planning, sensitivity, and emissions control strategy modeling. Model performance evaluation is performed by comparing output from

[65] Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, (EPA–454/B–07–002), April 2007, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf* Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, August 2005, updated November 2005 (''our Modeling Guidance''), located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html,* EPA–454/R–05–001

model simulations with ambient air quality data for the same time period to determine whether the model's performance is sufficiently accurate to justify using the model for simulating future conditions. Once CENRAP determined the model performance to be acceptable, it used the model to determine the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the URP. The results of CENRAP's visibility projection modeling are discussed in the section that follows.

3. Sources of Visibility Impairment

Visibility impairment in Class I areas is the result of local air pollution as well as transport of regional pollution across long distances. CENRAP used CAMx with its Particulate Source Apportionment Technology (PSAT) tool to provide source apportionment by geographic region and major source category. The pollutants causing the highest levels of light extinction are associated with the sources causing the most visibility impairment.

a. Sources of Visibility Impairment in Caney Creek

Tables 8 and 9 show the modeled contributions to total extinction at Caney Creek for each source category and species for 2002 and 2018, respectively.[66] Visibility impairment at Caney Creek in 2002 on the worst 20% days is largely due to SO_4 from point sources that contributes over half (75.1 Mm^{-1}) of the total extinction of 133.93 Mm^{-1}. The largest contributions of SO_4 come from Texas (11.55 Mm^{-1} from all source categories) and the eastern United States (17.98 Mm^{-1}). Overall, the largest source region contributions to visibility impairment in 2002 are from the eastern United States (19.16 Mm^{-1}), Texas (14.89 Mm^{-1}), and Arkansas (13.57 Mm^{-1}).

In 2018, Arkansas sources will contribute the most to visibility impairment at Caney Creek, as large reductions in impairment from point sources in East Texas and the eastern U.S. will occur while SO_4 emissions, particularly from point sources, are expected to increase in Arkansas. The 2018 projection shows the total extinction at Caney Creek for the worst 20% days is estimated to be 85.84 Mm^{-1}, a reduction of approximately 36% from 2002 levels. Anticipated reductions of SO_4 emissions from point sources in Texas, the eastern United States, Indiana, and Ohio will account for a decrease of 24.41 Mm^{-1} in total light extinction, which is approximately half of the total expected reduction between 2002 and 2018. Even with such large expected reductions in SO_4 emissions from point sources in 2018, extinction due to point sources will still be the highest contributor to visibility impairment on the worst 20% days, accounting for over half of the total extinction. Visibility impairment from all Arkansas sources will decrease by 2.32 Mm^{-1}, almost entirely due to expected reductions from mobile sources. Total reductions in NO_3 emissions from mobile sources will contribute a decrease in total extinction of approximately 9 Mm^{-1}. There is an under-prediction bias in the model that must be considered when examining source apportionment results for SO_4. Use of a 12 km resolution modeling grid in CAMX reduced the summertime SO_4 bias but required large computational expense. The use of higher resolution modeling should be reconsidered in future modeling efforts.

TABLE 8—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT CANEY CREEK WILDERNESS AREA IN 2002

[Mm^{-1}]

	Total [1]	Point	Natural	On-road	Non-road	Area
SO4	87.05	75.10	0.09	1.19	1.70	5.66
NO3	13.78	4.06	0.64	4.70	2.45	1.37
POA	10.50	1.29	1.33	0.46	1.34	5.32
EC	4.80	0.19	0.33	0.86	1.79	1.40
SOIL	1.12	0.19	0.01	0.01	0.01	0.87
CM	3.73	0.21	0.04	0.03	0.02	3.19
Sum	*133.93*	*81.04*	*2.45*	*7.26*	*7.31*	*17.81*

[1] Totals include contributions from boundary conditions and secondary organic matter.

TABLE 9—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT CANEY CREEK WILDERNESS AREA IN 2018

[Mm^{-1}]

	Total [1]	Point	Natural	On-road	Non-road	Area
SO4	48.95	39.83	0.07	0.12	0.44	5.31
NO3	7.57	2.84	0.53	0.97	1.33	1.37
POA	9.93	1.76	1.18	0.14	1.03	5.09
EC	3.17	0.24	0.30	0.16	0.94	1.31
SOIL	1.29	0.35	0.01	0.01	0.01	0.87
CM	3.58	0.24	0.04	0.03	0.01	3.02
Sum	*85.84*	*45.27*	*2.12*	*1.44*	*3.76*	*16.96*

[1] Totals include contributions from boundary conditions and secondary organic matter.

[66] The species contributing to visibility extinction at Caney Creek and Upper Buffalo, shown on Tables 8–11, are the following: sulfate (SO_4), nitrate (NO_3), primary organic aerosols (POA), elemental carbon (EC), soil dust, and coarse mass (CM). These species' precursors are SO_2, NO_X, and in some cases, NH_3 and VOCs.

b. Sources of Visibility Impairment in Upper Buffalo

Tables 10 and 11 show the contributions to total extinction at Upper Buffalo for each source category and species for 2002 and 2018, respectively. Visibility impairment at Upper Buffalo in 2002 on the worst 20% days is largely due to SO_4 from point sources that contributes over half (72.17 Mm^{-1}) of the total extinction of 131.79 Mm^{-1}. The largest contributions of visibility impairment due to SO_4 come from the eastern United States (18.56 Mm^{-1}), Indiana (9.79 Mm^{-1}), Illinois (8.06 Mm^{-1}), and Kentucky (6.93 Mm^{-1}). Overall, the largest source region contributions to visibility impairment in 2002 are from the eastern United States (20.00 Mm^{-1}), Arkansas (13.47 Mm^{-1}), Indiana (10.20 Mm^{-1}), Illinois (9.64 Mm^{-1}), and Missouri (9.60 Mm^{-1}).

In 2018, Arkansas sources will contribute the most to visibility impairment at Upper Buffalo, as large reductions in impairment from point sources in Indiana, Illinois, Ohio and the eastern U.S. will occur while SO_4 emissions, particularly from point sources, are expected to increase in Arkansas. The 2018 projection shows the total extinction at Upper Buffalo for the worst 20% days is estimated to be 86.16 Mm^{-1}, a reduction of approximately 35% from 2002 levels. Anticipated reductions of SO_4 emissions from point sources in the eastern United States, Indiana, Illinois, Kentucky and Ohio will account for a decrease of 28.43 Mm^{-1} in total light extinction, more than 60% of the total expected reduction in impairment between 2002 and 2018. Even with such large expected reductions in SO_4 emissions from point sources in 2018, extinction due to point sources will still be the highest contributor to visibility impairment on the worst 20% days, accounting for approximately half of the total extinction. Visibility impairment from all Arkansas sources will decrease by 1.45 Mm^{-1}, due to expected reductions from mobile sources. Total reductions in NO_3 emissions from mobile sources will contribute a decrease in total extinction of approximately 8.5 Mm^{-1}. There is an under-prediction bias in the model that must be considered when examining source apportionment results forSO_4. Use of a 12 km resolution modeling grid in CAMX reduced the summertime sulfate bias but required large computational expense. The use of higher resolution modeling should be reconsidered in future modeling efforts.

TABLE 10—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT UPPER BUFFALO WILDERNESS AREA IN 2002

[Mm^{-1}]

	Total [1]	Point	Natural	On-road	Non-road	Area
SO_4	83.18	72.17	0.08	1.15	1.67	5.24
NO_3	13.30	3.93	0.61	4.14	2.71	1.23
POA	10.85	1.06	1.33	0.47	1.38	5.75
EC	4.72	0.16	0.31	0.80	1.93	1.30
SOIL	1.21	0.20	0.02	0.01	0.01	0.93
CM	6.85	0.29	0.05	0.05	0.02	6.02
Sum	*131.79*	*77.80*	*2.39*	*6.62*	*7.72*	*20.46*

[1] Totals include contributions from boundary conditions and secondary organic matter.

TABLE 11—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT UPPER BUFFALO WILDERNESS AREA IN 2018

[Mm^{-1}]

	Total [1]	Point	Natural	On-road	Non-road	Area
SO_4	45.38	37.09	0.06	0.12	0.42	4.95
NO_3	9.22	3.48	0.63	1.10	1.81	1.48
POA	10.17	1.48	1.20	0.14	1.01	5.49
EC	3.07	0.21	0.28	0.15	0.99	1.21
SOIL	1.40	0.40	0.01	0.01	0.01	0.93
CM	6.53	0.36	0.05	0.04	0.02	5.65
Sum	*86.16*	*43.02*	*2.24*	*1.57*	*4.25*	*19.71*

[1] Totals include contributions from boundary conditions and secondary organic matter.

c. Arkansas' Contribution to Visibility Impairment in Class I Areas Outside the State

CAMx PSAT results were also utilized to evaluate the impact of Arkansas emission sources in 2002 and 2018 on visibility impairment at Class I areas outside of the state. Arkansas sources are modeled to have contributions to the Class I areas in Missouri (Hercules-Glades and Mingo). Outside of Arkansas and Missouri, the largest contribution from Arkansas sources is at the Wichita Mountains Class I area in Oklahoma, amounting to 2.0% of the visibility impairment at Wichita Mountains in 2002 and 2.3% in 2018. Arkansas is also projected to contribute a small amount of visibility degradation at Class I areas in other states listed in Table 12. We agree that additional emission reductions in Arkansas, beyond those controlled through BART requirements, are not necessary to protect visibility at Class I areas outside of the state at this time. Table 12 summarizes the projected contribution from Arkansas emissions on visibility degradation at 9 Class I areas for the 20 percent worst days in 2002 and 2018, as modeled by CENRAP.[67]

[67] See Appendix E of the TSD for CENRAP Emissions and Air Quality Modeling To Support Regional Haze State Implementation, found in Appendix 8.1 of the Arkansas RH SIP.

TABLE 12—PERCENT CONTRIBUTION FROM ARKANSAS EMISSIONS TO TOTAL VISIBILITY IMPAIRMENT AT CLASS I AREAS ON 20% WORST DAYS [68]

Class I area	State	2002 (percent)	2018 (percent)
Upper Buffalo	Arkansas	10.2	14.0
Caney Creek	Arkansas	10.1	13.1
Hercules Glades	Missouri	5.9	7.6
Mingo	Missouri	3.3	4.4
Wichita Mountains	Oklahoma	2.0	2.3
Mammoth Cave	Kentucky	1.0	1.8
Bondville	Illinois	1.2	1.5
Breton Island	Louisiana	1.1	1.3
Cadiz	Kentucky	0.9	1.2

4. Consultation and Emissions Reductions for Other States' Class I Areas

As in the development of Arkansas' RPGs for Caney Creek and Upper Buffalo, ADEQ used CENRAP as its main vehicle for facilitating collaboration with FLMs and other states in satisfying its LTS consultation requirement. This helped ADEQ and other state environmental agencies analyze emission apportionments at Class I areas and develop coordinated RH SIP strategies.

Section 51.308(d)(3)(i) requires that Arkansas consult with other states if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that Arkansas consult with other states if those states' emissions are reasonably anticipated to contribute to visibility impairment at Caney Creek and Upper Buffalo. ADEQ's consultations with other states are described in section V.C.3 above. The CENRAP visibility modeling demonstrates Arkansas sources are responsible for a visibility extinction of approximately 7.1 inverse megameters [69] (Mm^{-1}) at Hercules Glades and for a visibility extinction of approximately 4.95 Mm^{-1} at Mingo on the worst 20% days for 2002.[70] ADEQ consulted with Missouri, as well as with several other states whose emissions have a potential visibility impact at Caney Creek and Upper Buffalo. As already discussed elsewhere in this proposed notice, ADEQ neither requested additional emission reductions from other states, nor made a commitment to other states for additional emission reductions beyond those already factored in to the CENRAP's photochemical modeling for the 2018 visibility projections. All states participating in ADEQ's consultation process agreed with this decision.

We are proposing to find that ADEQ's consultations satisfy the requirements under section 51.308(d)(3)(i) and (ii).

5. Mandatory Long Term Strategy Factors

Section 51.308(d)(3)(v) requires that Arkansas consider certain factors in developing its long-term strategy (the LTS factors). These include: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. For the reasons outlined below, we are proposing to find that Arkansas has not satisfied all the requirements of Section 51.308(d)(3)(v).

a. Reductions Due to Ongoing Air Pollution Programs

In addition to its BART determinations, Arkansas' LTS incorporates emission reductions due to a number of ongoing air pollution control programs. This includes EPA's Clean Air Interstate Rule (CAIR), which was expected to cap Arkansas' ozone season trading budget for annual NOx allocations at 9,596 tons by 2015. Consistent with EPA guidance and regulations (see 70 FR 39104, 39106 (July 6, 2005)), many states relied on EPA's Clean Air Interstate Rule (CAIR) to satisfy key elements of Regional Haze SIPs. The D.C. Circuit, however, found CAIR to be inconsistent with the requirements of the Act and remanded the rule to the Agency. *North Carolina* v. *EPA,* 531 F.3d 896, 929–30 (D.C. Cir. 2008); modified on rehearing, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the remand of the CAIR rule, on July 6, 2011, EPA finalized the Transport Rule, also known as the Cross-State Air Pollution Rule (CSAPR), a rule intended to reduce the interstate transport of fine particulate matter and ozone (see 76 FR 48208). Since Arkansas was subject to CAIR only for ozone season NOx, its Regional Haze SIP did not rely on CAIR to meet the requirements for BART or for attaining the in-state emissions reductions necessary to ensure reasonable progress. Instead, Arkansas evaluated controls for its potential BART sources. Arkansas made BART determinations for its subject to BART sources, including Electric Generating Units (EGUs) that might have been controlled under CAIR. Controls on these sources are an element of Arkansas' LTS for attaining the RPGs at Caney Creek and Upper Buffalo. In terms of the LTS, EPA anticipates that the Transport Rule will result in similar or better improvements in visibility than those predicted from CAIR at Class I areas in Arkansas. As a result, we do not expect the remand of CAIR to have a significant negative effect on the ability of Arkansas' LTS to ensure that Caney Creek and Upper Buffalo meet the RPGs in the State's RH SIP. We note that to assess whether a state's current strategies will be sufficient to meet its RPGs, the RHR requires a midcourse review by each state and, if necessary, a correction of the state's regional haze plan. *See* 40 CFR 52.308(g). If for a particular Class I area, the emissions reductions resulting from the Transport

[68] Contributions less than 1% were excluded from Table 12.

[69] An inverse megameter is the direct measurement unit for visibility impairment data. It is the amount of light scattered and absorbed as it travels over a distance of one million meters. Deciviews (dv) can be calculated from extinction data as follows: $dv = 10 \times \ln (b_{ext}(Mm^{-1})/10)$.

[70] See Appendix E of the TSD for CENRAP Emissions and Air Quality Modeling To Support Regional Haze State Implementation, found in Appendix 8.1 of the Arkansas RH SIP.

Rule do not provide similar or greater benefits than CAIR and if meeting the RPGs at one of its Class I areas is in jeopardy, the State will be required to address this circumstance in its five year review.

ADEQ also considered the Tier 2 Vehicle Emission Standards in developing its LTS. Federal Tier 2 Vehicle Emission Standards for passenger cars and light trucks were fully implemented in 2007 and similar rules for heavy trucks were scheduled to be implemented by 2009. These federal standards will result in reductions of emissions of PM, ozone precursors, and non-methane organic compounds. In developing its LTS, ADEQ also considered the Highway Diesel and Nonroad Diesel Rules, which mandated the use of lower sulfur fuels in diesel engines beginning in 2006 for highway diesel fuel, and 2007 for nonroad diesel fuel. These federal rules have resulted in more effective control of PM emissions from diesel engines by allowing the installation of control devices that were technically infeasible for fuels with higher sulfur content.

We approved Arkansas' Visibility Protection SIP on February 10, 1986 (51 FR 4910). We approved Arkansas' Part II Visibility Protection SIP, which addresses reasonably attributable visibility impairment (RAVI) at Caney Creek and Upper Buffalo, on July 21, 1988 (53 FR 27514). As we note in section IV.H of this proposed notice, the FLMs did not identify any integral vistas in Arkansas. In addition, Caney Creek and Upper Buffalo are not experiencing RAVI, nor are any Arkansas sources affected by the RAVI provisions. For this reason, the Arkansas RH SIP does not incorporate any measures to specifically address RAVI.

b. Measures To Mitigate the Impacts of Construction Activities

Section 51.308(d)(3)(v)(B) requires that Arkansas consider measures to mitigate the impacts of construction activities in developing its LTS. Construction-related activities are believed to be a small contributor to fine and coarse particulates. ADEQ notes that since the Arkansas Water and Air Pollution Control Act does not apply to land clearing, land grading, or road construction operations, ADEQ has limited opportunities to mitigate air emissions resulting from construction activities. However, ADEQ notes the federal General Conformity program requires assessment of the potential impacts of any construction-related emissions of criteria pollutants from federal projects in areas that have been designated as not attaining the National Ambient Air Quality Standards (NAAQS) for that pollutant. ADEQ also participates in the Blue Skyways Collaborative, a regional group that works collaboratively on the introduction of innovative, regional-scale, transportation-related programs and projects. The State has directed grant funds to fleet managers and equipment suppliers as a means of subsidizing diesel retrofits and the biodiesel market.

c. Emissions Limitations and Schedules of Compliance

Section 51.308(d)(3)(v)(C) requires that in developing its LTS, Arkansas consider emissions limitations and schedules of compliance to achieve the RPGs. The SIP contains emission limits and schedules of compliance for those sources subject to BART: the AECC Bailey Unit 1; the AECC McClellan Unit 1; the AEP Flint Creek Boiler No. 1; the Entergy Lake Catherine Unit 4; the Entergy White Bluff Units 1, 2, and the Auxiliary Boiler; and the Domtar Power Boilers No. 1 and 2. The schedules for implementation of BART for these sources are identified in Section 9.3 of the RH SIP and in the State's RH Rule included in Appendix 9.3C of the SIP. The BART emission limits established by ADEQ are an element of the LTS, and since we are proposing to disapprove a portion of ADEQ's BART determinations, we cannot propose to approve this element of the LTS.

d. Source Retirement and Replacement Schedules

Section 51.308(d)(3)(v)(D) requires that Arkansas consider source retirement and replacement schedules in developing its LTS. ADEQ stated retirement and replacement will be managed in conformance with existing SIP requirements pertaining to the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) programs. ADEQ notes source retirement and replacement will be tracked through on-going point source inventories.

e. Agricultural and Forestry Smoke Management Techniques

Section 51.308(d)(3)(v)(E) requires that Arkansas consider smoke management techniques for agricultural and forestry management purposes in developing its LTS. ADEQ considered smoke management techniques for the purposes of agricultural and forestry management in its LTS. Regulation 18 of the Arkansas Pollution Control and Ecology Commission contains a general prohibition on ''open burning of refuse, garbage, trade waste, or other waste material,'' but exempts controlled fires used for forest and wildlife management and certain agricultural activities (ADEQ Reg. 18.602–18.603). In 2007, the Arkansas Forestry Commission approved revisions to the Arkansas Smoke Management Program (SMP). The Arkansas SMP is designed to assure that prescribed fires are planned and executed in a manner designed to minimize impacts associated with the smoke produced by prescribed fires. The Arkansas SMP recommends a written fire plan that includes measures that can be taken to reduce residual smoke from burning activities. The Arkansas SMP also includes a process to evaluate potential smoke impacts at sensitive receptors and guidelines for scheduling fires such that exposure of sensitive populations is minimized and visibility impacts in Class I areas are avoided.

f. Enforceability of Emissions Limitations and Control Measures

Section 51.308(d)(3)(v)(F) requires that Arkansas ensure the enforceability of emission limitations and control measures used to meet reasonable progress goals. ADEQ has ensured that all emission limitations and control measures used to meet RPGs are enforceable by incorporating these into State regulations.[71] The State's RH Rule, Chapter 15 of the APC&E Commission Regulation 19, contains the BART requirements for all subject to BART sources in Arkansas. ADEQ has also committed to issuing enforceable Part 70 air quality permits requiring BART-eligible sources subject to BART to install BART and achieve the associated BART emission limits. Subject sources must achieve the BART emission limits referenced above within five years of our approval of the SIP, as required by section 51.308(e)(1)(iv). ADEQ determined that emission limitations or control measures other than BART are not currently required in order to meet the established RPGs. As discussed previously, we disagree with this position and are proposing to disapprove the RPGs.

g. Anticipated Net Effect on Visibility Due to Projected Changes

Section 51.308(d)(3)(v)(G) requires that in developing its LTS, Arkansas consider the anticipated net effect on visibility due to projected changes in point, area, and mobile source

[71] See ''Arkansas Pollution Control and Ecology Commission Regulation No. 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control,'' found in Appendix 9.3C of the Arkansas RH SIP.

emissions over the period addressed by the long-term strategy. In developing its RH SIP, ADEQ relied on the CENRAP's 2018 modeling projections, which show that net visibility is expected to improve by 3.88 dv at Caney Creek and 3.75 dv at Upper Buffalo. CENRAP's 2018 modeling projections account for changes in point, area, and on-road and non-road mobile emissions. The results of CENRAP's 2018 modeling projections are discussed in sections IV.E.2 and IV.E.3 of this proposed rulemaking.

6. Our Conclusion on Arkansas' Long Term Strategy

We are proposing to partially approve and partially disapprove Arkansas' LTS. Because we are proposing to disapprove some of ADEQ's BART determinations, we are also proposing to disapprove the corresponding emission limits and schedules of compliance that Arkansas relied on as part of its LTS. With the exception of this element, the LTS satisfies the requirements of 40 CFR 51.308(d)(3), and we are proposing to approve these remaining elements.

F. Coordination of RAVI and Regional Haze Requirements

Our visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for RH, as explained in section IV, above. Under our RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. *See* 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in Arkansas. In addition, Caney Creek and Upper Buffalo are not experiencing RAVI, nor are any Arkansas sources affected by the RAVI provisions. Thus, the Arkansas RH SIP submittal does not explicitly address the two requirements regarding coordination of RH with the RAVI LTS and monitoring provisions. However, Arkansas previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source.[72] We are proposing to find that this RH submittal appropriately supplements and augments Arkansas' RAVI visibility provisions to address RH by updating the monitoring and LTS provisions. We discuss the relevant monitoring provisions in the section that follows.

G. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) requires the SIP contain a monitoring strategy for measuring, characterizing, and reporting of RH visibility impairment that is representative of all mandatory Class I Federal areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in Section 51.305 for reasonably attributable visibility impairment. As Section 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. Since the monitors at Caney Creek and Upper Buffalo are IMPROVE monitors, we are proposing that ADEQ has satisfied this requirement. See the TSD for details concerning the IMPROVE network.

Section 51.308(d)(4)(i) requires the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address RH for all mandatory Class I Federal areas within the state are being achieved. The IMPROVE monitor at Upper Buffalo was installed in 1991. Shortly after the creation of CENRAP, its monitoring workgroup noted there was a visibility void in Southern Arkansas. In 2001, the Caney Creek Wilderness area IMPROVE monitor was added to help fill that void. ADEQ also commits in the Arkansas RH SIP to evaluate the monitoring network periodically and consider evaluation technology changes and the need for new monitors. With the addition of the monitor at Caney Creek, we are proposing to find that ADEQ has satisfied this requirement.

Section 51.308(d)(4)(ii) requires that ADEQ establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within Arkansas to RH visibility impairment at mandatory Class I Federal areas both within and outside the state. The monitor at Caney Creek is operated by Caney Creek Wilderness Area personnel, while the monitor at Upper Buffalo is operated by Upper Buffalo Wilderness Area personnel. The IMPROVE monitoring program is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As section 51.308(d)(4) indicates, participation in the IMPROVE program constitutes compliance with this requirement. We are therefore proposing that ADEQ has satisfied this requirement.

Section 51.308(d)(4)(iv) requires that the SIP must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the state. To the extent possible, Arkansas should report visibility monitoring data electronically. Section 51.308(d)(4)(vi) also requires that ADEQ provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We are proposing that Arkansas' participation in the IMPROVE network ensures the monitoring data is reported at least annually, is easily accessible, and therefore complies with this requirement.

Section 51.308(d)(4)(v) requires that ADEQ maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically. Please refer to section V.G., above, where we discuss ADEQ's emission inventory. ADEQ has stated that it intends to update the Arkansas statewide emissions inventories periodically. We are proposing that this satisfies the requirement in section 51.308(d)(4)(v).

H. Federal Land Manager Coordination

Both Caney Creek and Upper Buffalo are federally protected wilderness areas for which the United States Department of Agriculture (USDA) Forest Service is the FLM. Although the FLMs are very active in participating in the RPOs, the RHR grants the FLMs a special role in the review of the RH SIPs, summarized in section III.H., above. We view both the FLMs and the state environmental agencies as our partners in the RH process.

Section 51.308(i)(1) requires that by November 29, 1999, Arkansas must have identified in writing to the FLMs the title of the official to which the FLM of Caney Creek and Upper Buffalo can submit any recommendations on the implementation of section 51.308. We acknowledge this section has been satisfied by all states via communication prior to this SIP.

Under Section 51.308(i)(2), Arkansas was obligated to provide the Forest Service with an opportunity for consultation, in person and at least 60 days prior to holding a public hearing on it RH SIP. In practice, state environmental agencies have usually

[72] Arkansas' part II Visibility Protection SIP contained RAVI provisions and was approved by EPA on July 21, 1988 (53 FR 27514).

provided all FLMs—the Forest Service, the Park Service, and the Fish and Wildlife Service, copies of their RH SIP, as the FLMs collectively have reviewed these RH SIPs. ADEQ followed this practice and sent its draft of this implementation plan revision to the federal land manager staff on February 22, 2008 and notified the federal land manager staff of the public hearing held on July 7, 2008.

Section 51.308(i)(3) requires that ADEQ provide in its RH SIP a description of how it addressed any comments provided by the FLMs. ADEQ has provided that information in Appendix 2.1 of its RH SIP.

Lastly, Section 51.308(i)(4) specifies the RH SIP must provide procedures for continuing consultation between the state and Federal Land Manager on the implementation of the visibility protection program required by section 51.308, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in the mandatory Class I Federal areas. ADEQ has stipulated in its RH SIP it will continue to coordinate and consult with the FLMs as required by section 51.308(i)(4). ADEQ states it intends to consult the FLMs in the development of future progress reports and plan revisions, as well as during the implementation of programs having the potential to contribute to visibility impairment at Caney Creek and Upper Buffalo. We are proposing that ADEQ has satisfied section 51.308(i).

I. Periodic SIP Revisions and Five-year Progress Reports

ADEQ affirmed its commitment to complete items required in the future under our RHR. ADEQ acknowledged its requirement under 40 CFR 51.308(f), to submit periodic progress reports and RH SIP revisions, with the first report due by July 31, 2018 and every ten years thereafter.

ADEQ also acknowledged its requirement under 40 CFR 51.308(g), to submit a progress report in the form of a SIP revision to the us every five years following this initial submittal of the Arkansas RH SIP. The report will evaluate the progress made towards the RPGs for each mandatory Class I area located within Arkansas and in each mandatory Class I area located outside Arkansas which may be affected by emissions from within Arkansas. We are proposing that ADEQ has satisfied section 51.308(f) and (g).

J. Determination of the Adequacy of Existing Implementation Plan

Section 51.308(h) requires that Arkansas take one of the listed actions, as appropriate, at the same time the State is required to submit any 5-year progress report to EPA in accordance with section 51.308(g). ADEQ has committed in its SIP to take one of the actions listed under 51.308(h), depending on the findings of the five-year progress report. We are proposing that ADEQ has satisfied section 51.308(h).

V. Our Analysis of Arkansas' Interstate Visibility Transport SIP Provisions

We received a SIP from Arkansas to address the interstate transport requirements of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on April 2, 2008. Concerning such CAA requirements preventing sources in the state from emitting pollutants in amounts which will interfere with efforts to protect visibility in other states, Arkansas stated that the State's RH Rule, the APC&E Commission Regulation 19, chapter 15, satisfies the requirement of section 110(a)(2)(D)(i) regarding the protection of visibility. Arkansas indicated in the April 2, 2008 submittal that at the time, it was not possible to assess whether there is any interference with measures in the applicable SIP for another State designed to protect visibility for the 8-hour ozone and $PM_{2.5}$ NAAQS in other states, until such time as Arkansas submits and EPA approves the Arkansas RH SIP.

As an initial matter, we note that section 110(a)(2)(D)(i)(II) does not explicitly specify how we should ascertain whether a state's SIP contains adequate provisions to prevent emissions from sources in that state from interfering with measures required in another state to protect visibility. Thus, the statute is ambiguous on its face, and we must interpret that provision.

Our 2006 Guidance recommended that a state could meet the visibility prong of the transport requirements of section 110(a)(2)(D)(i)(II) of the CAA by submission of the RH SIP, due in December 2007. Our reasoning was that the development of the RH SIPs was intended to occur in a collaborative environment among the states. In fact, in developing their respective reasonable progress goals, CENRAP states consulted with each other through CENRAP's work groups. As a result of this process, the common understanding was that each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the RHR. CENRAP states consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals. In developing their visibility projections using photochemical grid modeling, CENRAP states assumed a certain level of emissions from sources within Arkansas, consistent with the BART determinations made by ADEQ. In the State's September 27, 2011 supplemental submittal, ADEQ clarified that the base year modeling inventory used by CENRAP in the 2002 base case modeling was prepared by the CENRAP Modeling Workgroup and its consultants, and was derived primarily from the 2002 National Emissions Inventory (NEI). ADEQ also clarified that it provided the CENRAP Modeling Workgroup with the controlled BART source emission limits contained in the State's RH Rule, the APC&E Commission Regulation 19, Chapter 15, for inclusion in the CENRAP's 2018 future case modeling. ADEQ stated in its Interstate Transport SIP that it is relying on the State RH Rule to meet the visibility prong of the transport requirements of section 110(a)(2)(D)(i)(II) of the CAA. The State's RH Rule became effective October 15, 2007. The current language of the regulation requires Arkansas' subject to BART sources to comply with BART requirements no later than five years after EPA approval of the RH SIP or 6 years after the effective date of the regulation, whichever is first. However, on March 26, 2010, the Arkansas Pollution Control & Ecology Commission, Arkansas' rulemaking body, granted all Arkansas subject to BART sources a variance from the compliance deadline imposed by the State's RH Rule, such that these sources are now required to comply with BART requirements no later than 5 years after EPA approval of the RH SIP.[73] Compliance with these BART requirements will ensure that Arkansas obtains its share of the emission reductions relied upon by other states to meet the RPGs for their Class I areas. Since compliance of Arkansas' subject to BART sources with BART requirements is dependent upon our approval of the RH SIP, and since we are proposing to disapprove a portion of the RH SIP, including some of Arkansas'

[73] A copy of the Arkansas Pollution Control and Ecology Commission's Minute Order can be viewed at *http://www.adeq.state.ar.us/ftproot/Pub/commission/minute_orders/10-08_Petition_from_Variance_Entergy_Swepco_AECC.pdf.*

BART determinations, a portion of the emission reductions committed to by Arkansas and relied upon by other states will not be realized.

As we are proposing to disapprove a majority of the BART determinations made by ADEQ for its subject to BART sources, we are proposing to find that the Arkansas SIP revision submittal does not fully ensure that emissions from sources in Arkansas do not interfere with other State's visibility programs as required by section 110(a)(2)(D)(i)(II) of the CAA. Specifically, the BART determinations we are proposing to disapprove, will not result in the corresponding emission reductions other states relied on to achieve the RPGs in their Class I areas. Therefore, we are proposing to partially approve and partially disapprove the portion of the Arkansas Interstate Transport SIP submittal that addresses the visibility requirement of section 110(a)(2)(D)(i)(II) that emissions from Arkansas sources not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility.

VI. Proposed Action

A. Regional Haze

We are proposing to partially approve and partially disapprove Arkansas' RH SIP revision submitted on September 23, 2008, August 3, 2010, and supplemented on September 27, 2011. Specifically, we are proposing to approve the following:

- The State's identification of affected Class I areas;
- The establishment of baseline and natural visibility conditions;
- The Uniform Rate of Progress (URP);
- The State's reasonable progress goal (RPG) consultation and the long-term strategy (LTS) consultation;
- The regional haze monitoring strategy and other SIP requirements under section 51.308(d)(4);
- The State's commitment to submit periodic regional haze SIP revisions and periodic progress reports describing progress towards the RPGs;
- The State's commitment to make a determination of the adequacy of the existing SIP at the time a progress report is submitted;
- And the State's consultation and coordination with Federal land managers (FLMs)

We are proposing to disapprove the State's RPGs because Arkansas did not consider the four statutory factors that states are required to consider in establishing RPGs under the CAA and section 51.308(d)(1)(A).

We are proposing to partially approve and partially disapprove the portions of these submittals addressing the State's identification of subject to BART sources; the requirements for best available retrofit technology (BART); the State's RH Rule; and the LTS. Specifically, we are proposing to approve the following:

- The State's identification of BART-eligible sources, with the exception of the 6A Boiler at the Georgia-Pacific Crossett Mill, which we are proposing to find is BART-eligible;
- The State's identification of subject to BART sources, with the exception of its determination that the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill are not subject to BART;
- The following BART determinations made by ADEQ: the PM BART determination for the No. 1 Boiler of the AEP Flint Creek plant; the SO_2 and PM BART determinations for the natural gas firing scenario for Unit 4 of the Entergy Lake Catherine plant; the PM BART determinations for both the bituminous and sub-bituminous coal firing scenarios for Units 1 and 2 of the Entergy White Bluff plant; and the PM BART determination for the No. 1 Power Boiler of the Domtar Ashdown Mill;
- The portion of the submittal we received on September 23, 2008, and as revised by the submittal received on August 3, 2010, that contains those portions of Chapter 15 of APC&E Commission Regulation 19 which correspond to the portions of the Arkansas RH SIP we are proposing to approve. Specifically, we are proposing to approve the following sections of Chapter 15 of APC&E Commission Regulation 19: Reg. 19.1501; Reg. 19.1502; Reg. 19.1503; the portion of Reg. 19.1504(A) that identifies AECC Bailey Generating Station (Unit 1), AECC McClellan Generating Station (Unit 1), Domtar Ashdown Mill (Power Boilers No. 1 and 2), Lake Catherine (Unit 4), White Bluff (Units 1, 2, and the Auxiliary Boiler), and AEP Flint Creek (Boiler No. 1) as subject to BART sources; Reg. 19.1504(B); Reg. 19.1504(C); Reg. 19.1505(A)(3); Reg. 19.1505(D)(3); Reg. 19.1505(F)(3); Reg. 19.1505(G)(3); Reg. 19.1505(I)(3); Reg. 19.1505(J)(3); Reg. 19.1505(M)(2); Reg. 19.1506; and Reg. 19.1507; and
- The State's LTS, with the exception of the portion of the LTS that relied on the BART emission limits and schedules of compliance we are proposing to disapprove.

We are proposing to disapprove the following:

- ADEQ's determination that the 6A and 9A Boilers of the Georgia-Pacific Crossett Mill are not subject to BART;
- The following BART determinations made by ADEQ: the NO_X, PM, and SO_2 BART determinations for both Unit 1 of the Arkansas Electric Cooperative Corporation (AECC) Bailey plant and Unit 1 of the AECC McClellan plant; the SO_2 and NO_X BART determinations for the No. 1 Boiler of the American Electric Power (AEP) Flint Creek plant; the NOx BART determination for the natural gas firing scenario and the PM, SO_2, and NO_X BART determinations for the fuel oil firing scenario for Unit 4 of the Entergy Lake Catherine plant; the SO_2 and NO_X BART determinations for both the bituminous and sub-bituminous coal firing scenarios for Units 1 and 2 of the Entergy White Bluff plant; the BART determination for the Auxiliary Boiler of the Entergy White Bluff Plant; the SO_2 and NO_X BART determinations for the No. 1 Power Boiler of the Domtar Ashdown Mill; and the SO_2, NO_X, and PM BART determinations for the No. 2 Power Boiler of the Domtar Ashdown Mill;
- A portion of Arkansas' Regional Haze Rule, APC&E Commission Regulation 19, chapter 15, which we received on September 23, 2008, and as revised by the submittal received on August 3, 2010. Specifically, we are proposing to disapprove the following sections of Chapter 15 of APC&E Commission Regulation 19: The portion of Reg. 19.1504(A) that fails to identify the 6A and 9A Boilers at the Georgia-Pacific Crossett Mill as subject to BART sources; Reg. 19.1505(A)(1); Reg. 19.1505(A)(2); Reg. 19.1505(B); Reg. 19.1505(C); Reg. 19.1505(D)(1); Reg. 19.1505(D)(2); Reg. 19.1505(E)(1); Reg. 19.1505(E)(2); Reg. 19.1505(E)(3); Reg. 19.1505(F)(1); Reg. 19.1505(F)(2); Reg. 19.1505(G)(1); Reg. 19.1505(G)(2); Reg. 19.1505(H); Reg. 19.1505(I)(1); Reg. 19.1505(I)(2); Reg. 19.1505(J)(1); Reg. 19.1505(J)(2); Reg. 19.1505(K); Reg. 19.1505(L); Reg. 19.1505(M)(1); Reg. 19.1505(N)(1); Reg. 19.1505(N)(2); and Reg. 19.1505(N)(3); and
- The portion of the State's LTS that relied on the BART emission limits and schedules of compliance we are proposing to disapprove.

B. Interstate Transport of Visibility

We are also proposing to partially approve and partially disapprove a portion of a SIP revision submitted by the State of Arkansas for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS.

Specifically, we are proposing a partial approval and partial disapproval of the Arkansas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from Arkansas sources not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. Although the BART emission limits we are proposing to approve will result in the corresponding emission reductions other states relied on to achieve the RPGs in their Class I areas, the BART emission limits we are proposing to disapprove will not result in the corresponding emission reductions other states relied on to achieve the RPGs in their Class I areas. Therefore, ADEQ will obtain only a portion of its share of the emission reductions relied upon by other states to meet the RPGs for their Class I areas.

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

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

Dated: October 3, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–26336 Filed 10–14–11; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 870

Cardiovascular Devices; Reclassification of External Pacemaker Pulse Generator Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: External Pacemaker Pulse Generator; Availability; Proposed Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2011–N–0650]

Cardiovascular Devices; Reclassification of External Pacemaker Pulse Generator Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the external pacemaker pulse generator preamendments class III device into class II (special controls). FDA is proposing this reclassification on its own initiative based on new information. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

DATES: Submit either electronic or written comments by January 17, 2012. Please see section XIII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0650 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and docket number and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elias Mallis, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1538, Silver Spring, MD 20993, 301–796–6216.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The FD&C Act, as amended by the 1976 amendments (Pub. L. 94–295), the SMDA (Pub. L. 101–629), FDAMA (Pub. L. 105–115), MDUFMA (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed by means of premarket notification procedures (510(k) process) without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, *e.g., Holland Rantos* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard,* supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch,* supra, 422 F.2d at 951.) Whether data before the Agency are past or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act (21 U.S.C. 360c(a)(3)) and 21 CFR 860.7(c)(2). (See, *e.g., General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA,* 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)).

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, *e.g.,* the contents of a pending premarket approval application (PMA). (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This includes information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

FDAMA added a new section 510(m) to the FD&C Act. New section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

II. Regulatory History of the Device

In the preamble to the proposed rule (44 FR 13284, March 9, 1979 and 44 FR 13372, March 9, 1979), the Cardiovascular Devices Panel recommended that external pacemaker pulse generators be classified into class III because the device provided temporary life-support and that certain kinds of failures could cause this device to emit inappropriate electrical signals, which could cause cardiac irregularities and death. The panel indicated that general controls alone would not be sufficient and that there was not enough information to establish a performance standard. Consequently, the panel believed that premarket approval was necessary to assure the safety and effectiveness of the device. In 1980, FDA classified external pacemaker pulse generators into class III after receiving no comments on the proposed rule. In 1987, FDA published a clarification by inserting language in the codified language stating that no effective date had been established for the requirement for premarket approval for external pacemaker pulse generator devices (52 FR 17732, May 11, 1987).

In 2009, FDA published an order for the submission of information on external pacemaker pulse generators by August 7, 2009 (74 FR 16214, April 9, 2009). In response to that order, FDA received reclassification petitions from three device manufacturers who all recommended that external pacemaker pulse generators be reclassified to class II. The manufacturers stated that safety and effectiveness of these devices may be assured by design and maintenance (special controls), consideration of risks involved with the device, and an independent verification that appropriate standard operating procedures are in place and being followed.

III. Device Description

An external pacemaker pulse generator is a device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. This device, which is used outside the body, is used as a temporary substitute for the heart's intrinsic pacing system until a permanent pacemaker can be implanted, or to control irregular heartbeats in patients following cardiac surgery or a myocardial infarction. The device may have adjustments for impulse strength, duration, R-wave sensitivity, and other pacing variables.

IV. Proposed Reclassification

FDA is proposing that the device subject to this proposal be reclassified from class III to class II. FDA believes that the identified special controls would provide reasonable assurance of safety and effectiveness. Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and 21 CFR 860.130, based on new information with respect to the devices, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II. The Agency has identified special controls that would provide reasonable assurance of their safety and effectiveness. FDA has considered external pacemaker pulse generators in accordance with the reserved criteria and determined that the device does require premarket notification. The Agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submission as provided for under section 510(m) of the FD&C Act.

V. Risks to Health

After considering the information from the reports and recommendations of the advisory committees (panels) for the classification of these devices along with information submitted in response to the 515(i) order and any additional information that FDA has encountered, FDA has evaluated the risks to health associated with the use of external pacemaker pulse generators and determined that the following risks to health are associated with its use:

1. Failure to pace—A failure of the electronic circuitry can cause failure to pace the patient's heart;
2. Improper pacing leading to high rate—Electric failure, electromagnetic interference, or improper programming can cause sustained high rate pacing, which can lead to arrhythmias such as pulseless ventricular tachycardia;
3. Improper pacing leading to unwanted stimulation—Pacing during vulnerable periods of the cardiac cycle or at higher than programmer amplitude can induce cardiac arrhythmias; and
4. Micro/macro shocks—Uncontrolled leakage currents or patient auxiliary currents can cause an electric shock resulting in an arrhythmia or cardiac tissue damage.

VI. Summary of Reasons for Reclassification

FDA believes that external pacemaker pulse generators should be reclassified into class II because special controls, in addition to general controls, can be established to provide reasonable assurance of the safety and effectiveness of the device. In addition, there is now adequate effectiveness information sufficient to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Reclassification Is Based

Since 1980 when FDA classified external pacemaker pulse generators into class III, sufficient evidence has been developed to support a reclassification to class II with special controls. The effectiveness and acceptability of pacing for the treatment of various cardiac arrhythmias has been demonstrated in extensive clinical studies and is summarized in the American College of Cardiology/American Heart Association Guidelines for implantable cardiac pulse generators. Several key performance standards have been developed and used to support marketing applications over the years, which address various aspects of design and performance and have been determined to be sufficient in the establishment of requirements for market entry.

VIII. Proposed Special Controls—Related Documents

FDA believes that the special controls described in the guidance document ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator'' are sufficient to mitigate the risks to health described in section V of

this document. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document that, when finalized, would serve as a special control, if FDA reclassifies this device. If adopted, following the effective date of a final rule classifying the device, any firm submitting a 510(k) premarket notification for the device would need to address the issues covered in the special control guidance. However, the firm would need to show only that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

IX. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule will not introduce new requirements for manufacturers of external pacemaker pulse generators, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

This rule proposes to reclassify external pacemaker pulse generator devices into class II with special controls from its current classification as preamendment class III. Manufacturers of new or modified external pacemaker pulse generators would continue to be subject to premarket notification requirements as they have already been marketed through premarket notification procedures. The rule would require compliance with the proposed special controls, in addition to general controls. As described in the special controls guidance document, however, the standards for labeling, safety, and performance testing for these devices reflect current FDA requirements for marketing clearance.

The information and data requirements for 510(k) submissions remain unchanged. Thus, there would be no additional manufacturer costs associated with this proposed rule. While reclassification is unlikely to result in any procedural changes in how the affected devices are reviewed, the proposed rule will ensure that manufacturers understand the requirements by clarifying FDA's expectations for premarket submissions in the special controls guidance document.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. According to FDA's Registration and Listing database, there are seven establishments that currently market external pacemaker pulse generator devices. Because this proposed rule would impose no additional regulatory burdens, the Agency proposes to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain state requirements ''different from or in addition to'' certain Federal requirements applicable to devices. (See section 521 of the FD&C Act (21 U.S.C. 360k); *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470 (1996); and *Riegel* v. *Medtronic, Inc.* 128 S. Ct. 999 (2008)). If this proposed rule is made final, the special controls established by the final rule would create ''requirements'' for specific medical devices under 21 U.S.C. 360(k), even though product sponsors have some flexibility in how they meet those requirements (Cf. *Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–742 (9th Cir. 1997)).

XII. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

XIII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final rule.

XIV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Gregoratos G., Cheitlin, M.D., Conill A., *et al.,* ''ACC/AHA Guidelines for Implantation of Cardiac Pacemakers and Antiarrhythmia Devices: Executive Summary—A Report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines (Committee on Pacemaker Implantation),'' *Circulation* 1998; 97; 1325–35.

2. Class II Special Controls Guidance Document: External Pacemaker Pulse Generator.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.3600 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 870.3600 External pacemaker pulse generator.

* * * * *

(b) *Classification.* Class II. The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator.''

Dated: October 11, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–26625 Filed 10–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0649]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: External Pacemaker Pulse Generator; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator.'' This draft guidance document describes a means by which external pacemaker pulse generators may comply with the requirement of special controls for class II devices. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 17, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elias Mallis,Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4622, Silver Spring, MD 20993–0002, 301–796–6216.

I. Background

This draft guidance document was developed as a special control guidance to support the reclassification of external pacemaker pulse generators into class II (special controls). This draft guidance document will serve as the special control for external pacemaker pulse generators. Section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) provides that the Agency may initiate the reclassification of a device. This classification will be a reclassification of the device. FDA must publish a notice in the **Federal Register** announcing this reclassification. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify this device type from class III into class II (special controls), under section 513(e) of the FD&C Act (21 U.S.C. 360c(e)).

FDA is issuing this guidance document as a level 1 draft guidance document. FDA will consider any comments that are received within 90 days of the issuance of this notice to determine whether to revise the guidance document.

II. Significance of Special Controls Guidance Document

FDA believes that adherence to the recommendations described in this draft guidance document, when finalized, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of external pacemaker pulse generator classified under § 870.3600 (21 CFR 870.3600). If classified as a class II device under § 870.3600, an external pacemaker pulse generator will need to comply with the requirement for special controls; manufacturers will need to address the issues requiring special controls as identified in the guidance document or by some other means that provides equivalent assurances of safety and effectiveness.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1769 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E are currently approved under OMB control number 0910–0120; the collections of information in 21 CFR 56.115 are currently approved under OMB control number 0910–0130; the collections of information in 21 CFR part 812 are currently approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 801 are currently approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 11, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–26630 Filed 10–13–11; 8:45 am]

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H.R. 771/P.L. 112–38
To designate the facility of the United States Postal Service located at 1081 Elbel Road in Schertz, Texas, as the "Schertz Veterans Post Office". (Oct. 12, 2011; 125 Stat. 399)

H.R. 1632/P.L. 112–39
To designate the facility of the United States Postal Service located at 5014 Gary Avenue in Lubbock, Texas, as the "Sergeant Chris Davis Post Office". (Oct. 12, 2011; 125 Stat. 400)

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