FEDERAL REGISTER

Vol. 76 Tuesday

No. 163 August 23, 2011

OFFICE OF THE FEDERAL REGISTER

UNITED STATES GOVERNMENT PRINTING OFFICE

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 163 August 23, 2011

Pages 52533–52850

OFFICE OF THE FEDERAL REGISTER

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How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

RIN 3206–AM05

Personnel Records

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is amending the regulations governing disposition of Official Personnel Folders of Federal employees to clarify the roles and responsibilities of OPM and Federal agencies.

DATES: Effective September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Tanya Bennett, at (202) 606–4054, by facsimile at (202) 606–1719, or by e-mail at *Tanya.Bennett@opm.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management is amending subpart C of part 293 of title 5, Code of Federal Regulations (Personnel Records) to clarify agency responsibilities concerning Official Personnel Folders (OPFs) of current and former Federal employees in the civil service.

Background

Generally, OPM and the other agencies share responsibility for personnel management in the Executive Branch. OPM functions as a government-wide regulator of personnel management. Agencies, on the other hand, are required to maintain and establish their own personnel office within their agency, and the head of each agency, in accordance with applicable statutes, Executive orders and rules, is responsible for personnel management in their agency. The OPF is a critical tool for personnel management. An OPF is a file containing records reflecting an employee's appointment, employment history and benefits information. OPFs contain long-term records that serve to protect the legal and financial rights of the Government and the employee. Pursuant to Executive Order 12107 (December 28, 1978), OPFs are designated as records of OPM, and the President has delegated authority to the Director of OPM to regulate the establishment, maintenance, and transfer of OPFs.

Although OPFs are designated as records of OPM, agencies have significant responsibilities related to OPFs. OPM regulations require agencies to establish OPFs for most employees. OPM's regulations also specify the content of the OPF, which each agency must maintain. Moreover, agencies are generally required to retain the OPF of a separated employee for 30 working days after separation and to transfer that OPF thereafter to the National Personnel Records Center (NPRC). Further, if an employee's OPF is lost or destroyed, the current (or former) employing agency must reconstruct the OPF.

The transfer of an OPF from the NPRC can be the result of an agency initially submitting the OPF to the NPRC improperly, an activity such as amending or correcting the OPF of a current or former employee, the rehiring of a former Federal employee, or a need to produce the document for litigation. The return of the OPF to the NPRC produces a subsequent and additional transfer expense.

Purpose and Summary of Changes

The purpose of this rule is to clarify the roles and responsibilities of OPM and other agencies with respect to OPFs by articulating, delineating, and differentiating the responsibilities of OPM as regulator of OPFs and the responsibilities of other agencies, who have a variety of reasons to use OPFs in connection with the appointment and employment of Federal employees. To clarify these roles and responsibilities, this rule makes the following changes to subpart C of 5 CFR part 293:

- In § 293.301, inserting language excluding agencies from the application of subpart C when they are exempt from OPM recordkeeping requirements by statute, regulation, or formal agreement with OPM. Further, inserting a sentence stating that OPM's Guide to Personnel Recordkeeping will list the excluded agencies. These changes clarify which agencies are or are not bound by subpart C.
- In § 293.303, amending the heading from "Ownership of the folder" to "The roles of the Office, agencies, and custodians" and revising and clarifying the text of the section. These changes clarify the intent of the section.
- In § 293.303, removing the phrase "under the jurisdiction and control of" to eliminate confusion about the meaning of this clause. Also, adding the phrase "each former employee" to recognize that this section also covers OPFs of former employees. The remaining language has been designated paragraph (a).
- In § 293.303, adding paragraph (b) to clarify the role and responsibilities of OPM; paragraph (c) to clarify the roles and responsibilities of agencies, generally; paragraph (d)(1) to establish the definition of the term "custodian" for purposes of this section, and paragraphs (d)(2) through (d)(5) to establish the roles and responsibilities of custodians.
- In § 293.303. adding paragraph (e) to clarify that agencies and custodians will carry out their roles and responsibilities for OPFs pursuant to this subpart and OPM's Guide to Personnel Recordkeeping.
- In § 293.307, adding paragraphs (c) and (d) to specify that agencies are responsible for costs associated with transferring OPFs to and from the NPRC.

Comments and Responses

OPM published its proposed rule with request for comments on January 19, 2010. 75 FR 2821 (Jan. 19, 2010). OPM received comments from two individuals, four different components of the Department of Defense, and two other Federal agencies, including the NPRC. Below is a summary of the comments received, which is followed by OPM's responses.

1. Storage Costs

Two commenters opposed the amendment to 5 CFR 293.307, which adds paragraphs (c) and (d) to clarify the OPF-related costs for which agencies are responsible, because the commenters believe these provisions will shift the cost of storing OPFs with NARA to other agencies.

OPM believes these commenters misconstrued the rule. Nothing in this rule shifts the cost of storing OPFs with

NARA from OPM to other agencies. Under the rule, OPM remains responsible for the cost of storing OPFs. In addition, OPM remains responsible under the Privacy Act for all costs associated with responding to a former employee's request for a review or a copy of her or his OPF, and under the Freedom of Information Act for responses to third party (public) requests for information from OPFs (although, as noted below, OPM may seek reimbursement from such third-party requesters). The change made by the rule is that transfer of custody for storage of OPFs is now predicated on OPFs being accepted for storage by NARA.

Another commenter requested that the rule specify the NARA actual costs that OPM will be responsible for and those that will be the responsibility of the other agencies for storage, transfers, references, interfile, and disposition (destruction or accessioning into the Archives of the United States) of OPFs.

As clarified by the rule, agencies will be responsible for the costs associated with transferring OPFs to NPRC, requesting OPFs from NPRC, and for any other service initiated by an agency. OPM will be responsible for the storage charges of OPFs that have been accepted by the NPRC and placed into storage, and for all charges associated with responding to requests from former employees and the public under the Privacy Act and Freedom of Information Act (subject to possible reimbursement from such third-party requesters). OPM will be charged in the same manner as other agencies for the OPFs of its own current and former employees.

OPM has chosen not to specify in the rule the actual costs charged by the NPRC for services because such costs will be established pursuant to the NPRC's revolving fund authority. OPM has an interagency agreement with the NPRC that specifies the services provided to OPM and the corresponding costs. This interagency agreement is regularly updated.

2. Requests for Copies of OPFs From Former Employees or OPF Information From the Public

A commenter stated that this rule would allow OPM to charge another agency for costs associated with a request by a former employee for a copy of the employee's OPF or a request for OPF information by a member of the public.

OPM may well seek to recover the costs of some of these requests from third-party requesters (pursuant to FOIA, for example), but whether or not OPM undertakes that sort of cost-recovery, this rule is not intended to enable OPM to shift the costs of such third-party requests to another agency and will not effectuate such a cost-shifting. Once an OPF has been accepted by the NPRC, OPM becomes the custodian until and unless another agency requests the OPF. OPM will not charge agencies for the costs associated with responding to requests from former Federal employees or members of the public for records currently stored at the NPRC.

3. Requests for OPF Information From Federal Agencies

A commenter stated that the rule would allow OPM to charge other agencies that are requesting OPF information.

OPM believes that the commenter has slightly confused requesting information from an OPF and requesting the actual OPF. Currently, the NPRC does not charge for OPF information. For requests from agencies to the NPRC for an actual OPF, however, the NPRC charges a handling fee associated with transferring the file to and receiving it from an agency. Fees charged by the NPRC associated with handling OPFs as part of transferring OPFs will now be the responsibility of the agencies under this rule.

4. Effect on Electronic OPFs

Several commenters expressed concern that the amended rule may be construed to include electronic OPFs (eOPFs). One commenter mentioned that the migration to eOPF was required by 2012 and recommended that OPM not implement the changes to this rule until that time to alleviate any financial impact on agencies. Another commenter stated that the OPM's Enterprise Human Resource Integration (EHRI) had already factored NPRC transactions into maintenance costs for eOPFs. Three commenters recommended that the rule specify it applies only to paper OPFs and/or include a statement excluding eOPFs.

OPM agrees that a distinction should be made between the roles and responsibilities for paper OPFs and eOPFs. OPM has added language to § 293.303 to distinguish between paper OPFs and eOPFs. OPM acknowledges that it has already factored NPRC transactions into maintenance costs for eOPFs with respect to EHRI.

5. Data Calls, Cost Studies and Statistical Analysis

A commenter wanted to know what data calls were issued to collect information in preparation for this regulation and which specific agencies provided feedback to OPM in this process. The same commenter wanted OPM to provide the cost studies, statistical analysis, and raw data used to justify the rule and the human capital cost increase to implement and track agency transactions.

OPM did not call for data from other agencies or conduct cost studies and statistical analysis in preparing this rule. The purpose of the rule is to correct a misunderstanding of the roles and responsibilities of OPM and the other agencies with respect to the transfer of OPFs to NPRC. This misunderstanding has resulted in agencies avoiding part of the cost of administering their own responsibilities with respect to OPFs. The commenter appears to misconstrue the rule as simply seeking a more beneficial cost arrangement for OPM; instead, the purpose is to differentiate the activities that are properly considered functions of agency human resources offices and thus ensure that an agency that initiates the transfer of an OPF assumes the costs associated with that action (just as that agency bears the costs associated with establishing and maintaining OPFs for its appointees and employees).

6. Employee Medical Folders and Employee Performance Files

A commenter asked that OPM address how this rule will affect Employee Medical Folders (EMFs) and Employee Performance Files (EPFs).

EMFs contain information determined by an agency's medical staff to be occupational medical records, which can follow the employee from agency to agency or be sent to NPRC if the employee separates from Federal service. The rule for disposition of EMFs, 5 CFR 293.510, which is not amended by this rule, instructs agencies to follow the same procedures established for disposition of OPFs, 5 CFR 293.307. Because this rule amends 5 CFR 293.307 to clarify that agencies are responsible for the costs associated with the transfer of OPFs to NPRC, the same requirements will apply to transferring EMFs to NPRC. As for EPFs, there is no separate cost associated with transferring EPFs because any information transferred is contained in the OPF as part of the left (temporary) side of the OPF (See 5 CFR 293.402 and 5 CFR 293.404).

7. Other Agency's Records Management Policies

Three commentators suggested that this rule might cause other agencies to amend their records management policies in order to charge agencies for use of their records.

OPM is not in a position to predict what other agencies might do in terms of their own records management policies in response to this rule or to comment on the position other agencies adopt or may adopt regarding records for which they are the custodian but that are not maintained in the OPF.

8. Change to the Title of Section 293.303

One commenter stated that the existing title of § 293.303, "Ownership of the Folder," is not confusing and, therefore, need not be changed.

OPM disagrees with the commenter. In OPM's experience, the use of the word "ownership" in the title of § 293.303 has resulted in disagreements over the meaning and scope of the word. In particular, it has created ambiguity in delineating the responsibilities of OPM and the other agencies with regard to the cost of transferring OPFs to and from the NPRC. The new title for § 293.303, "The roles and responsibilities of the Office, agencies, and custodians," provides a clearer statement of the purpose of the section and its new content.

9. Definition of Custodian

Four commenters submitted comments about adding a definition of the term "custodian" to § 293.102. Two commenters sought general clarification about the definition. A commenter contended that the definition was beyond OPM's authority under Executive Order 12107 and inconsistent with prior use of the term in OPM's Guide to Personnel Recordkeeping. Another commenter wanted the definition to be revised in order to make clear that the NPRC, although in physical possession of OPFs, is not responsible for the cost associated with the maintenance and disposition of the OPF once it arrives at NPRC.

Rather than amending § 293.102, the definitions section for all of 5 CFR part 293, OPM has decided to include the definition solely in the regulations for OPFs by amending § 293.303. In this rule, § 293.303 replaces the "jurisdiction and control" language that was introduced in 1954 by Executive Order 10561 (September 13, 1954) and included in Civil Service Commission regulations implementing that order (19 FR 6899 (October 28, 1954)), with the concept of custodian in order to more clearly articulate the responsibilities of OPM and the other agencies. Although Executive Order 10561 was revoked by Executive Order 12107 (December 28, 1978), OPM continued to use the "jurisdiction and control" language that was borrowed from it. The notion of jurisdiction and control has led to confusion about the delineation of responsibilities and costs associated with carrying out those responsibilities.

The purpose of this concept was to recognize that although other agencies are often in possession of the OPFs, the authority for the establishment, maintenance and transfer of them resides with OPM. The same purpose is reflected in this rule's revision in § 293.303 by creating paragraph (a), which keeps much of the original language from the section but eliminates the phrase "jurisdiction and control." Further, this rule revises § 293.303 by introducing several additional paragraphs that define the term custodian and specify the responsibilities of OPM, agencies, and custodians pertaining to establishing, maintaining, and transferring OPFs.

Executive Order 12107 grants OPM authority to promulgate regulations pertaining to the establishment, maintenance, and transfer of OPFs. Defining a term to be used by OPM within those regulations is consistent with this authority. Moreover, regulating the activities and responsibilities of agencies in physical possession of OPFs is inherently part of the maintenance and transfer of OPFs.

OPM does not agree that the definition of custodian contained in this rule is inconsistent with OPM's use of the term in the Guide to Personnel Recordkeeping. However, to the extent that an inconsistency arises, the definition of custodian in this rule is controlling for purpose of implementing these regulations. The Guide to Personnel Recordkeeping will be revised to resolve any inconsistency that comes to OPM's attention.

Instead of revising the definition of custodian to ensure that the NPRC is not responsible for costs associated with the maintenance and disposition of OPFs once they arrive at NPRC. OPM has added paragraph (d)(5) to § 293.303 to clarify that OPM is the custodian once the NPRC approves the transfer of an OPF from an agency.

10. When an Agency Is No Longer a Custodian

Three commenters noted that the proposed definition of custodian seemed to indicate that agencies no longer have responsibility for the cost of transferring OPFs to NPRC after an individual separates from Federal service because an agency is the legal custodian of an employee's OPF during the period of the employee's employment at that agency. The argument was that because agencies are required to hold the folders for a minimum of 30 days after an employee separates, and because the agency is responsible only during the period of employment, the agency is not responsible for transfer costs.

OPM agrees that an agency is the custodian during the period of an employee's employment. An agency remains the custodian, however, even after an employee separates, while it performs its personnel management responsibilities, which typically take 30 days. Agencies complete actions such as resignation, termination, or retirement *after* an employee separates from the losing agency. In addition, in the case of some actions outlined in Chapter 7 of the Guide to Personnel Recordkeeping, the OPF may remain in the possession of an agency for longer than 30 days. In order to accomplish these vital actions; ensure the accuracy, completeness, necessity, timeliness, and relevance of the actions; and ensure the fairness of decisions involving the subject of the OPF, as required by 5 U.S.C. 552a(e)(1), the folder remains in the physical possession of the agency for some time after separation. To clarify when an agency is no longer the custodian of an OPF, the rule amends § 293.303 by adding paragraphs (d)(4) and (d)(5).

11. Potential Augmentation of OPM's Appropriation

Three commenters suggested that the rule would result in an augmentation of OPM's appropriation because OPM receives appropriated funds for reimbursing the NPRC for costs associated with OPFs.

Although OPFs are designated as records of OPM, some of the administrative expenses associated with OPFs flow logically from each agency's requirements of maintaining its own workforce, including compliance with OPM's regulations. Indeed, having OPFs is part and parcel of having employees. Each agency is responsible for its own personnel management, and establishing, maintaining, and transferring OPFs are necessary functions of each agency's personnel office. This includes remedying OPFs submitted improperly, as well as amending or correcting OPFs of current and former employees, rehiring former Federal employees, and utilizing OPFs in litigation. Therefore, each agency's general operating appropriation is available to reimburse the NPRC for expenses related to these functions. At the same time, OPM's appropriation is available for expenses necessary to carry out OPM's Governmentwide functions regarding OPFs, such as storage of OPFs and servicing OPFs that have been transferred and accepted by the NPRC.

OPM is also responsible for expenses related to its own employees' OPFs.

Prior to Fiscal Year (FY) 2000, NARA financed the activities of the NPRC related to OPFs out of its own general operating appropriation. During this period, the NPRC paid the costs of transferring, storing, and providing other services associated with OPFs out of an appropriation to NPRC for this purpose. OPM did not reimburse the NPRC for costs associated with OPFs. (And agencies were—and still are—responsible for costs associated with establishing and maintaining OPFs for their employees).

Beginning with FY 2000, however, Congress changed the financing of the NPRC activities by establishing the Records Center Revolving Fund (Fund) and authorizing the NPRC to credit the Fund with fees charged to other agencies (Pub. L. 106–58, 113 Stat. 430, 460–61 (Sept. 29, 1999), codified at 44 U.S.C. 2901 note).

Currently, each agency incurs the cost of establishing OPFs for its own employees as a necessary expense of maintaining its workforce. Similarly, each agency has incurred costs associated with maintaining OPFs for its own employees. Agencies do not seek, or receive, reimbursement from OPM for these costs. Rather, agencies understand that they are required by regulation to perform these tasks and incur costs associated with fulfilling their responsibilities as employing agencies. However, because of the confusion created by the title of § 293.303, "Ownership of the Folder," and its mention of "jurisdiction and control" of OPFs, the costs of transferring OPFs to and from the NPRC have been avoided by the other agencies. By specifically providing that the costs associated with transferring OPFs are the responsibility of the transferring agencies, OPM has now eliminated this confusion.

This rule reflects OPM's position that services the NPRC provides to agencies transferring OPFs to the NPRC are not services that benefit OPM, but rather are services that allow agencies to fulfill their responsibilities as employers (and under OPM's regulations). Similarly, the services the NPRC provides to agencies initiating requests for OPFs from the NPRC are also services that benefit agencies, not OPM. Although OPM has incurred these costs since FY 2000, it would not be appropriate to continue such an arrangement now that the roles and responsibilities of OPM and the other agencies have been clarified.

12. NPRC Billing and Business Practices

A commenter stated that the implementation of this rule would have a negative impact on the NPRC's billing and business practices because it will have to initiate agreements with each agency for billing and services and it may be necessary to charge OPM by folder rather than by cubic foot.

OPM appreciates the concern for the potential impact this rule may have for the NPRC. However, OPM does not control the NPRC's billing and business practices, or how it will adjust to this rule. As noted previously, this rule is being adopted in order to rectify the ambiguity of which responsibilities are OPM's and which are responsibilities of the other agencies. Resolving this ambiguity ultimately should help the NPRC determine the appropriate billing and business practices to adopt and implement.

13. Excluded Agencies

While OPM was preparing the rule for publication and in discussions with the NPRC about the interagency agreement that governs the operating relationship between the NPRC and OPM, the NPRC brought to OPM's attention the potential for § 293.301, the applicability provision for subpart C (OPF regulations), to be read more broadly than OPM intended.

Section 293.301 states that the OPF regulations apply to "each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government." Prior to 1985, § 293.301 included a clause that exempted agencies from the OPF regulations if they were "specifically excluded from [OPM] recordkeeping requirements by statute, Office regulation or formal agreement between the Office and the agency" (5 CFR 293.301 (1985)).

However, the exclusionary language was subsequently removed from § 293.301. On October 19, 1982, OPM issued a notice in the Federal Register proposing to amend part 293 in order to move the guidelines on accessing OPFs from 5 CFR part 294 to 5 CFR part 293 (See 47 FR 46513 (Oct. 19, 1982)). As part of this proposed amendment, for reasons not stated, OPM amended § 293.301 by removing the clause exempting agencies specifically excluded from OPM's recordkeeping requirements. The rule became final on January 24, 1985, with no mention in the final notice of why the exclusionary language was removed (See 50 FR 3307 (Jan. 24, 1985)).

Removal of the exclusionary language was probably due to the fact that § 293.101(b) of 5 CFR 293, subpart A (Basic Policies on Maintenance of Personnel Records) contains similar language that may have been considered applicable to subpart C. Section 293.101(b) makes the basic policies on maintenance of personnel records applicable "to any department or independent establishment in the Executive Branch of the Federal Government * * * except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and that agency." However, as stated in § 293.101(b), it applies only to subpart A, not subpart C. Therefore, the exclusionary language of § 293.101(b), as written, does not affect § 293.301. The current language of § 293.301 appears to apply to agencies regardless of whether they are subject to OPM's basic policies on maintenance of personnel records.

At any rate, in practice, OPM has continued to consider agencies that are specifically excluded from OPM recordkeeping requirements by statute, regulation or formal agreements between OPM and other agencies (*i.e.*, exempt from subpart A) as exempt from OPM's OPF regulations (*i.e.*, exempt from subpart C). This practice is reflected in Chapter 2, Section 2–A of OPM's Guide to Personnel Recordkeeping, which is entitled "Employment Systems Outside the Office of Personnel Management's Recordkeeping Authority."

After consulting with the NPRC, OPM has addressed the potential to read § 293.301 more broadly then intended by reinserting the original, pre-1985 exclusionary language at the end of the current § 293.301. Moreover, OPM has added an additional sentence following this language that identifies OPM's Guide to Personnel Recordkeeping as the document where excluded agencies will be listed, which will allow for more efficient updates and revisions, rather than listing the agencies in the rule.

14. Need for an Effective Date

A commenter requested the rule have an established effective date that is far enough in the future to allow agencies' human resource offices and the NPRC to prepare for the changes made by this rule.

The proposed rule was published on January 19, 2010. Since that time, personnel offices have been on notice of the impending changes made by this rule and the NPRC has implemented a system that will permit it to bill individual agencies for the costs they incur. OPM is confident that agencies and the NPRC are capable of meeting

the requirements of this rule. Therefore, the effective date of these changes will be 30 days from the date of publication of this rule in the **Federal Register.**

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

List of Subjects in 5 CFR Part 293

Government employees, Privacy, Records.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM amends 5 CFR part 293, subpart C as follows:

PART 293—PERSONNEL RECORDS

Subpart C—Official Personnel Folder

■ 1. The authority citation for part 293, subpart C, is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 1103; 5 U.S.C. 1104; 5 U.S.C. 1302, 5 U.S.C. 2951(2), 5 U.S.C. 3301; 5 U.S.C. 4315; E.O. 12107 (December 28, 1978), 3 CFR 1954–1958 Compilation; E.O. 9830 (February 24, 1947); 3 CFR 1943–1948 Compilation.

■ 2. Revise § 293.301 to read as follows:

§ 293.301 Applicability of regulations.

Except for those agencies specifically excluded from Office of Personnel Management (OPM) recordkeeping requirements by statute, OPM regulation, or formal agreement between OPM and the agency, this subpart applies to—and within this subpart agency means—each executive department and independent establishment of the Federal Government; each corporation wholly owned or controlled by the United States; and, with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government. OPM will list agencies to which this subpart does not apply in the Guide to Personnel Recordkeeping, and will amend the Guide from time to time to update that list.

■ 3. Revise § 293.303 to read as follows:

§ 293.303 The roles and responsibilities of the Office, agencies, and custodians.

(a) The Official Personnel Folder (OPF) of each employee in a position subject to civil service rules and regulations and of each former employee who held such a position is part of the records of the Office of Personnel Management (Office).

(b) The Office has Government-wide responsibility for developing regulations, practices and procedures for the establishment, maintenance, and transfer of OPFs.

(c) Agencies shall be responsible for the following:

(1) The establishment of the OPF for a new appointee or a new employee for whom no OPF has previously been established; and

(2) The maintenance of a previously existing OPF during the period any new appointee or employee remains an agency's employee.

(d)(1) Custodian means the agency in physical possession of an OPF. In the case of an electronic OPF (eOPF), the custodian is the agency that has primary access to an eOPF contained within a document management system approved by the Office.

(2) A custodian shall be responsible for the maintenance and transfer of the OPF or eOPF, and the costs associated with these activities.

(3) An agency is the custodian of an OPF it requests from the National Personnel Records Center (NPRC), for any temporary use, from the date that the OPF is transmitted by the NPRC to the agency until the date that the NPRC receives the OPF back from the agency.

(4) An agency is no longer the custodian of an OPF once the OPF has been transferred to and accepted by the NPRC.

(5) Once NPRC has approved the transfer, the Office is the custodian of the OPF until the destruction date established for the file pursuant to the National Archive and Records Administration's General Records Schedule, unless another agency requests the OPF from the NPRC in the interim.

(e) Agencies and custodians shall carry out their responsibilities with respect to the OPF or eOPF in accordance with this subpart and the Office's Guide to Personnel Recordkeeping.

■ 4. Amend § 293.307 by adding new paragraphs (c) and (d) as follows:

§ 293.307 Disposition of folders of former Federal employees.

* * * * *

(c) Agencies are responsible for all costs associated with the establishment and maintenance of OPFs and the transfer of OPFs to the National Personnel Records Center.

(d) Agencies are responsible for all costs associated with agency-initiated requests for OPFs or services from the National Personnel Records Center.

[FR Doc. 2011–21395 Filed 8–22–11; 8:45 am]

BILLING CODE 6325–47–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 532 and 550

RIN 3206–AM08

Pay for Sunday Work

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to implement the ruling in the case of *Fathauer* v. *United States,* 566 F.3d 1352 (Fed. Cir. 2009). In this decision, the United States Court of Appeals for the Federal Circuit ruled that part-time employees are covered under the provisions of 5 U.S.C. 5546(a), the statute governing the payment of Sunday premium pay for work performed on Sundays. The revised Sunday premium pay regulations eliminate references to "full-time" employees, which will permit Sunday premium payments to part-time employees, in accordance with 5 U.S.C. 5546(a). Consistent with the reasoning in the *Fathauer* decision, OPM has determined that part-time prevailing rate employees are also entitled to payment of Sunday premium pay, pursuant to 5 U.S.C. 5544(a). Intermittent employees continue to be excluded from earning Sunday premium pay because of the nature of their appointment.

DATES: This rule is effective September 22, 2011.

FOR FURTHER INFORMATION CONTACT: David Barash by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On April 9, 2010, the U.S. Office of Personnel Management (OPM) issued proposed regulations at 75 FR 18133 to implement the decision in *Fathauer* v. *United States,* 566 F.3d 1352 (Fed. Cir. 2009), in which the court determined that part-time employees are covered under the Sunday premium pay statute at 5 U.S.C. 5546(a).

Background

Under the *Fathauer* decision, the United States Court of Appeals for the Federal Circuit held that the definition

of "employee" in 5 U.S.C. 5546(a) is unambiguous under the plain language of the statute and concluded that part-time employees are covered under the Sunday premium pay statute at 5 U.S.C. 5546(a). Consequently, we have revised the Sunday premium pay regulations to provide that part-time employees are entitled to premium pay for Sunday work.

OPM issued a compensation policy memorandum (CPM–2009–21, December 8, 2009) to inform departments and agencies of the *Fathauer* decision and to provide guidance for processing administrative claims for back pay. The guidance covers General Schedule and other employees covered by 5 U.S.C. 5546(a) and 5 CFR 550.171(a) and prevailing rate employees (wage grade employees) covered by 5 U.S.C. 5544(a) and 5 CFR 532.509. Based on the *Fathauer* decision, eligible part-time employees are entitled to Sunday premium pay under 5 U.S.C. 5546(a), effective as of May 26, 2009.

Eliminate Restriction for Sunday Premium Pay to Full-Time Employees Only

OPM's final regulations amend §§ 550.103 and 550.171(a) to remove references to "full-time" employee, which eliminate the restriction on the payment of Sunday premium pay to full-time employees only. The final regulations clarify, in accordance with the *Fathauer* decision, that part-time employees who are regularly scheduled to perform work on a Sunday are entitled to Sunday premium pay for the non-overtime hours worked. However, intermittent employees will continue to be excluded from earning Sunday premium pay because of the nature of their appointment and irregular work schedule. Sunday premium pay may be paid only to full-time and part-time employees who have Sundays as part of their non-overtime regularly scheduled tour of duty.

Prevailing Rate Employees

OPM applied the reasoning in the *Fathauer* decision to determine that part-time prevailing rate employees are covered under the Sunday premium pay provisions of 5 U.S.C. 5544(a) (also effective as of May 26, 2009). While OPM's regulation at § 532.509 does not reference either part-time or full-time employees, we are making a clarifying amendment to this section. Currently § 532.509 states that a wage employee whose regular work schedule *includes an 8-hour period of service* which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of 5 U.S.C. 5544. We are amending § 532.509 to clarify that a wage employee is entitled to Sunday pay for a period of service, a part of which is on Sunday, of *up to 8 hours*. This clarification is based on a Comptroller General opinion (46 Comp. Gen. 337 (1966)), that the period of service entitling an employee to Sunday premium pay may be less than 8 hours.

Discussion of Comments

The 60-day comment period for the proposed regulations ended on June 8, 2010. We received five comments in response to the proposed regulations, one from a national union organization and four from individual commenters. As explained below, OPM is adopting the proposed regulations as final regulations without further changes.

Two of the commenters questioned the use of Sunday premium pay and questioned the cost to taxpayers. These two comments are beyond the scope of this regulation. Sunday premium pay is authorized by statute. We are merely altering the Sunday premium pay regulations to ensure part-time employees are not excluded from receiving this entitlement pursuant to the statute at 5 U.S.C. 5546(a), consistent with a decision of the United States Court of Appeals for the Federal Circuit.

Administrative Claims

The union organization supported the proposed rules, but expressed concern that agencies may not notify employees in a timely manner of their right to file administrative pay claims. The union urged OPM to take more aggressive action by requiring agencies to advise part-time employees promptly of their right to file claims. While agencies are responsible for notifying their employees regarding actions that affect them, OPM took a proactive role in advising agencies in CPM 2009–21 that they should inform employees of the holding by the Court of Appeals in order to give notice to potential claimants. OPM provided thorough guidance in its memorandum and advised on the effective date of the decision and the time limitations for back pay claims permitted by the Barring Act of 1940, and noted that agencies could use the memorandum to inform employees of the *Fathauer* decision. OPM also provided notification to employees through its Web site and list server, published the proposed Sunday premium pay rule changes in the **Federal Register** as official notice to the public, and required agencies to post a notice of the rule change in a prominent place for employees to view.

The union organization also believes that OPM should issue regulations directing agencies to pay employees Sunday premium pay retroactive to May 26, 2009, without the need to file an administrative claim. It asserts that no administrative claim is necessary, which it believes would be consistent with the approach OPM used in issuing regulations to implement agency reimbursement provisions of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). However, Title II of the No FEAR Act contains provisions for agency reimbursement of the Judgment Fund for payment made to employees because of violations of antidiscrimination and whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under those laws. Unlike the compensation claims process, the No FEAR reimbursement rules are not subject to the provisions of the Barring Act or the Back Pay Act of 1966 (as amended) and apply specifically to one Government agency reimbursing another. Therefore, the administrative claims process is the appropriate means for employees to recover any unpaid Sunday premium pay owed them as a result of the *Fathauer* decision.

Employee Coverage

One commenter thought OPM diverged from the analysis of the *Fathauer* decision by limiting Sunday premium pay only to full-time and part-time employees in which Sundays are part of their regularly scheduled tour of duty. The commenter asserted that the proposed regulations do not reflect the Court of Appeals conclusions regarding the definition of "employee," (*i.e.*, generally, "those who work for pay"), and "full-time and part-time" workers do not encompass all types of employees who should be eligible to earn Sunday premium pay. The commenter also stated that the statutory requirement in which an employee performs work during a "regularly scheduled" period of service is unduly restrictive.

Another commenter also recommended that intermittent employees should receive Sunday premium pay. The individual reasoned that since intermittent employees may earn overtime pay under 5 U.S.C. 5542(a), they should also be permitted to earn Sunday premium pay. The commenter further noted that Sunday work imposes an inconvenience on all employees, and referred to the Court of Appeals conclusion regarding the definition of an "employee."

OPM disagrees with the commenters' recommendations. Employees, within the meaning of 5 U.S.C. 5546(a), are entitled to Sunday premium pay when they work a "regularly scheduled" 8 hour period of service which is not overtime work, a part of which falls on Sunday. OPM, by regulation, has defined "intermittent employment" as "employment without a regularly scheduled tour of duty." (See 5 CFR 340.401(b)). Accordingly, employees who are correctly classified as intermittent employees may not receive Sunday premium pay because, by definition, they do not perform regularly scheduled work.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM amends 5 CFR parts 532 and 550 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Revise § 532.509 to read as follows:

§ 532.509 Pay for Sunday work.

A wage employee whose regular work schedule includes a period of service of up to 8 hours which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of section 5544 of title 5, United States Code.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

■ 3. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(d), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 4. In § 550.103, revise the definition of *Sunday work* to read as follows:

§ 550.103 Definitions.

* * * * *

Sunday work means nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

* * * * *

■ 5. In § 550.171, revise paragraph (a) to read as follows:

§ 550.171 Authorization of pay for Sunday work.

(a) An employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103).

* * * * *

[FR Doc. 2011–21397 Filed 8–22–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN 3206–AM29

Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to ensure that the tables conform to the economic, demographic and mortality assumptions adopted by the Board of Actuaries and published in the **Federal Register** on June 3, 2011, as required by 5 U.S.C. 8461(i).

DATES: This rule is effective August 23, 2011.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: OPM has published a notice in the Federal Register at 76 FR 32242 (June 3, 2011) to revise the normal cost percentages under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, as amended, based on economic assumptions, new demographic factors and mortality assumptions adopted by the Board of Actuaries of the Civil Service Retirement System. By statute under 5 U.S.C. 8461(i), the demographic factors, economic and mortality assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act.

Section 843.309 of title 5, Code of Federal Regulations, regulates the payment of the basic employee death benefit. Under 5 U.S.C. 8442(b), the basic employee death benefit may be paid as a lump sum or as an equivalent benefit in 36 installments. These rules amend 5 CFR 843.309(b)(2) to conform the factor used to convert the lump sum to 36-installment payments with the revised economic assumptions.

Section 843.311 of title 5, Code of Federal Regulations, regulates the benefits for the survivors of separated employees under 5 U.S.C. 8442(c). This section provides a choice of benefits for eligible current and former spouses. If the current or former spouse is the person entitled to the unexpended balance under the order of precedence under 5 U.S.C. 8424, he or she may elect to receive the unexpended balance instead of an annuity.

Alternatively, an eligible current or former spouse may elect to receive an annuity commencing on the day after the employee's death or on the deceased separated employee's 62nd birthday. If the annuity commences on the deceased separated employee's 62nd birthday, the annuity will equal 50 percent of the annuity that the separated employee would have received had he or she

attained age 62. If the current or former spouse elects the earlier commencing date, the annuity is reduced using the factors in Appendix A to subpart C of part 843 to make the annuity actuarially equivalent to the present value of the annuity that the spouse or former spouse would have received if the annuity had commenced on the retiree's 62nd birthday. These rules amend that appendix to conform to the revised economic assumptions.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(B) and (d)(3) of title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The amendments made by this rule are statutorily mandated as a result of changes in economic assumptions that were published on June 3, 2011. Providing a comment period on the result of mathematical computations resulting from the changed economic assumptions is unnecessary and, to the extent that it would delay benefit payments, is contrary to the public interest.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order (E.O.) 12866, as amended by E.O. 13258 and E.O. 13422.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to surviving current and former spouses of former employees and Members who separated from Federal service with title to a deferred annuity.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

John Berry,

Director.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. In § 843.309, revise paragraph (b)(2) to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *

(2) For deaths occurring on or after October 1, 2004, 36 equal monthly installments of 3.01643 percent of the amount of the basic employee death benefit.

* * * * * *

■ 3. Revise Appendix A to subpart C of part 843 to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Diseased Separated Employees

With at least 10 but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	.0581
27	.0620
28	.0687
29	.0723
30	.0807
31	.0869
32	.0933
33	.1013
34	.1086
35	.1186
36	.1273
37	.1376
38	.1474
39	.1612
40	.1737
41	.1877
42	.2026
43	.2192
44	.2365
45	.2550
46	.2757
47	.2987
48	.3222
49	.3488
50	.3767
51	.4079
52	.4410
53	.4776
54	.5176
55	.5609
56	.6081
57	.6588
58	.7152
59	.7767
60	.8441
61	.9183

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	.1516
37	.1636
38	.1756
39	.1915
40	.2066
41	.2233
42	.2410
43	.2606
44	.2811
45	.3032
46	.3279
47	.3549
48	.3829
49	.4143
50	.4475
51	.4843
52	.5235
53	.5669
54	.6139
55	.6652
56	.7208
57	.7811
58	.8476
59	.9203

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth	
	After 1966	From 1950 through 1966
46	.4213	.4572
47	.4557	.4943
48	.4918	.5335
49	.5318	.5768
50	.5744	.6231
51	.6213	.6738
52	.6714	.7282
53	.7267	.7880
54	.7866	.8528
55	.8518	.9233
56	.9227	1.0000

[FR Doc. 2011–21396 Filed 8–22–11; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0128]

Asian Longhorned Beetle; Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by quarantining portions of Suffolk and Norfolk Counties, MA, and expanding the quarantined area in Worcester County, MA. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. We are also updating the list of regulated articles in order to reflect new information concerning host plants. These actions are necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule is effective August 23, 2011. We will consider all comments that we receive on or before October 24, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0128-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0128, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0128* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS; 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China and Korea is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. Immature beetles bore into tree trunks and branches of a host tree, causing heavy sap flow from wounds and sawdust accumulation at the tree base, eventually killing the tree. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 10 to 15 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction of public enjoyment of recreational spaces.

Quarantined Areas

The regulations in 7 CFR 301.51–1 through 301.51–9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Surveys conducted in Massachusetts by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the existing quarantined area in Worcester County, and in areas in Suffolk and Norfolk Counties. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Massachusetts are conducting intensive survey and eradication programs in the infested areas. The State of Massachusetts has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined areas to prevent the further spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the spread of ALB to other States and other countries.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State in which ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where ALB has been found. Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB. In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to expand the quarantined area in Worcester County and to include portions of Suffolk and Norfolk Counties. With these changes to the quarantined areas, the total square mileage of the quarantined areas in Worcester County is 98 square miles, with 22 square miles added in this expansion of the quarantined area; in Suffolk and Norfolk Counties, the total square mileage of the quarantined area is 10 square miles. These updated quarantined areas are described in the regulatory text at the end of this document.

Regulated Articles

Section 301.51–2 of the regulations designates certain items as regulated articles. Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51–4 through 301.51–9 of the regulations. Regulated articles listed in § 301.51–2(a) have included green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Cercidiphyllum* (katsura), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm). This list of genera was based on scientific literature provided by government officials, scientists, and government and individual researchers from China as

well as survey information collected in the United States since the time of discovery of the pest.

Based on additional survey experience and research, we are amending the list of regulated articles by adding *Koelreuteria* spp. (golden rain tree). This action is necessary because studies conducted in China by APHIS scientists have found ALB completing a full life cycle in trees of this genus in the environment.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of ALB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We have prepared an economic analysis for this action. The action identifies nurseries; site developers, excavators, or construction companies; tree service companies or landscapers; firewood dealers; municipal departments; and facilities having grounds-keeping staffs, such as schools, golf courses, and apartment complexes as the small entities most likely to be affected by this action and considers the costs associated with complying with the inspection and other requirements imposed by the regulations on the interstate movement of regulated articles from quarantined areas. Based on the information presented in the analysis, we expect that affected entities would not experience any additional compliance costs as a result of this rule because a State-imposed quarantine is already in place that applies the same movement restrictions and inspection requirements. We invite comment on our economic analysis, which is posted with this interim rule on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–2, paragraph (a) is revised to read as follows:

§ 301.51–2 Regulated articles.

* * * * *

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Cercidiphyllum* (katsura), *Fraxinus* (ash), *Koelreuteria* (golden rain tree), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm).

* * * * *

■ 3. In § 301.51–3, paragraph (c), under the heading "Massachusetts," a new entry for *Suffolk and Norfolk Counties* is added and the entry for *Worcester County* is revised to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Massachusetts

Suffolk and Norfolk Counties. The area in Suffolk and Norfolk Counties, including the City of Boston and the Town of Brookline, that is bounded by a line starting at the intersection of Metropolitan Avenue and Poplar Street, which becomes Canterbury Street; then northeast on Canterbury Street to American Legion Highway; then northeast on American Legion Highway to Route 28; then north and northwest on Route 28 to Centre Street; then west on Centre Street, which becomes Perkins Street; then west on Perkins Street to Chestnut Street; then northwest on Chestnut Street to Cypress Street; then northwest on Cypress Street to Walnut Street; then west and south on Walnut Street, which becomes Warren Street; then west on Warren Street to Lee Street; then northwest on Lee Street to Heath Street; then southwest and west on Heath Street to Hammond Street; then south on Hammond Street to Lagrange Street; then south on Lagrange Street to Beverly Road; then southeast on Beverly Road to Independence Drive; then southwest on Independence Drive to VFW Parkway; then southwest on VFW Parkway to Corey Street; then southeast on Corey Street to Centre Street; then east on Centre Street to West Roxbury Parkway; then southeast on West Roxbury Parkway to Washington Street; then northeast on Washington Street to Metropolitan Avenue; then southeast on Metropolitan Street to the point of beginning.

Worcester County. The portion of Worcester County, including portions or all of the municipalities of Worcester, Holden, West Boylston, Boylston, Auburn, and Shrewsbury that is bounded by a line starting at the intersection of Route 140 (Grafton Circle) and Route 9 (Belmont Street) in Shrewsbury; then north and northwest on Route 140 to the Boylston Town Boundary; then follow the entirety of the Boylston Town Boundary until it comes to the West Boylston Town boundary on the Massachusetts Department of Conservation and

Recreation Watershed Property; then along the West Boylston Town boundary until it intersects Manning Street; then southwest on Manning Street in Holden to Wachusett Street (Route 31); then south on Wachusett Street to Highland Street (still Route 31); then southwest on Highland Street to Main Street; then southeast on Main Street to Bailey Road; then south on Bailey Road to Chapin Road; then south on Chapin Road to its end; then continuing in a southeasterly direction to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester City boundary; then along the Worcester City boundary until it intersects Oxford Street; then south on Oxford Street to Auburn Street; then southeast on Auburn Street crossing under the Massachusetts Turnpike (I–90) and continuing southeast on Millbury Street; then northeast on Washington Street to the Massachusetts Turnpike (I–90); then east along the Massachusetts Turnpike (I–90) to the Auburn Town boundary; then north along the Auburn Town boundary to the Worcester City boundary; then northeast, north, and northwest along the Worcester City boundary until it intersects Route 20 (Hartford Turnpike); then east on Route 20 to Lake Street; then north and northeast on Lake Street to Route 9 (Belmont Street); then east on Route 9 to the point of beginning.

* * * * *

Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21520 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2011–0029]

European Larch Canker; Expansion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the domestic quarantine regulations to expand the regulated area for European larch canker to include additional areas in Maine. We are also correcting some misidentifications of previously listed regulated areas. This action is necessary to prevent human-assisted transmission of European larch canker from infested areas to noninfested areas.

DATES: This interim rule is effective August 23, 2011. We will consider all comments that we receive on or before October 24, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0029-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0029, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0029* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Chaloux, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 734–0917.

SUPPLEMENTARY INFORMATION:

Background

European larch canker (ELC), *Lachnellula willkommi* (Dasycypha), is a serious plant disease caused by a fungus that can kill mature and immature species of the genus *Larix* (larch) and *Pseudolarix* (Golden larch). In parts of Europe, ELC has eliminated the European larch as a plantation species. ELC was first discovered in the United States in Massachusetts in 1927. It was declared eradicated in 1965, but in 1984, infestations were found in portions of Maine.

Under the regulations in "Subpart–European Larch Canker" (7 CFR 301.91 through 301.91–9, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain regulated articles from regulated areas to prevent the spread of ELC. These regulations, which were established in May 1984, list parts of several counties in Maine as regulated areas. Articles regulated under the subpart include logs, pulpwood, branches, twigs, plants, and scion and other propagative material of *Larix* or *Pseudolarix* spp., except seeds. Such articles may be moved interstate from regulated areas only under certificates, limited permits, or compliance agreements. The regulations also include provisions for the issuance of certificates and limited permits, and requirements for compliance agreements, as well as for assembly and inspection of regulated articles.

Maine has State-imposed ELC quarantine requirements that mirror APHIS' requirements. Each year, the Maine Forest Service conducts survey activities in and around the regulated areas. Since APHIS established the ELC regulations, Maine's survey data have revealed additional instances of ELC in native forested areas in previously uninfested townships within the regulated area. The State of Maine has confirmed the establishment of an intrastate quarantine for the townships of Beddington, Boothbay, South Bristol, T24 Middle Division Bingham's Penobscot Purchase, and T25 Middle Division Bingham's Penobscot Purchase. These townships have been quarantined either because they have been found to be infested with ELC or because they provide a buffer area between infested and uninfested townships.

In this interim rule, we are adding the above-named townships to our list of ELC-regulated areas in § 301.91–3. This action is necessary to prevent the human-assisted dissemination of ELC, thus safeguarding the Nation's forests, landscapes, and natural resources from this highly destructive pathogen.

Because our list of areas regulated for ELC in § 301.91–3 has not been revised in a number of years, certain additional changes are needed to make it current. We are revising the names of some of the listed jurisdictions to reflect current naming conventions, including the use of abbreviations, for townships in Maine. These naming conventions are also used elsewhere in our regulations, e.g., in the list of areas in Maine regulated for gypsy moth under § 301.45–3. We are also correcting some misspellings in the regulations of the names of townships regulated for ELC. These changes and corrections are intended to prevent any misidentification of, or confusion about, ELC-regulated areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the human-

assisted spread of ELC to noninfested areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

Maine has expanded its intrastate ELC quarantine to include the townships of Beddington, Boothbay, South Bristol, T24 Middle Division Bingham's Penobscot Purchase, and T25 Middle Division Bingham's Penobscot Purchase. This interim rule amends our domestic ELC quarantine regulations to include additional those areas in Maine and to correct some misidentifications of previously listed regulated areas.

The only small entities in the newly federally regulated townships that may be affected are forestry operations. The number of these operations in the 5 townships has ranged between 8 and 18 over the past 5 years. It is estimated that the annual value of harvested larch sold from the newly quarantined areas averages about $375. Any potential impact of the rule is further minimized by the opportunity for forestry operations to enter into compliance agreements with lumber mills to process larch from quarantined areas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501 A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.91–3, paragraph (c), the entry for Maine is revised to read as follows:

§ 301.91–3 Regulated areas.

* * * * * *

(c) * * *

Maine

Hancock County. The entire townships of Gouldsboro, Sorrento, Sullivan, T7 SD, T9 SD, T10 SD, and T16 MD, and Winter Harbor.

Knox County. The entire townships of Appleton, Camden, Cushing, Friendship, Hope, Owls Head, Rockland, Rockport, Saint George, South Thomaston, Thomaston, Union, Warren, and Washington.

Lincoln County. The entire townships of Alna, Boothbay, Boothbay Harbor, Bremen, Bristol, Damariscotta, Edgecomb, Jefferson, Newcastle, Nobleboro, Somerville, South Bristol, Southport, Waldoboro, Westport Island, and Wiscasset.

Waldo County. The entire townships of Lincolnville and Searsmont.

Washington County. The entire townships of Addison, Baring Plantation, Beals, Beddington, Berry Township, Calais, Cathance Township, Centerville Township, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Cutler, Deblois, Dennysville, East Machias, Eastport, Edmunds Township, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion Township, Marshfield, Meddybemps, Milbridge, Northfield, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, T18 MD BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, Trescott Township, Whiting, and Whitneyville.

Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21519 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0002]

RIN 0579–AD16

Importation of Peppers From Panama

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow, under certain conditions, the importation of commercial shipments of peppers from Panama into the United States without treatment. Conditions of entry to which the peppers will he suhject include trapping, pre-harvest inspection, and shipping procedures. This action will allow for the importation of peppers from Panama into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1

through 319.56–51, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On June 1, 2010, we published in the **Federal Register** (75 FR 30303–30305, Docket No. APHIS–2010–0002) a proposal [1] to amend the regulations in § 319.56–40 by allowing, under certain conditions, the importation of commercial shipments of peppers from Panama into the United States without treatment. We also proposed to add two additional pests to the list of pests for which inspection is required: Bacterial wilt and tomato severe leaf curl virus. Finally, we proposed removing two pests from the list of pests for which peppers from Central America must be inspected: The banana moth (*Opogona sacchari*) and tomato yellow mosaic virus.

We solicited comments concerning our proposal for 60 days ending August 2, 2010. We received five comments by that date. They were from producers, representatives of State and foreign governments, and private individuals. The issues raised in those comments are discussed below by topic.

Pest List

Section 319.56–40 requires the national plant protection organizations (NPPOs) of Central American countries exporting peppers to the United States to inspect growing sites or greenhouses for certain pests prior to harvest. We proposed to add Panama to the list of countries eligible to export peppers under these conditions. Among the pests listed in § 319.56–40 are the weevil *Faustinus ovatipennis*, bacterial wilt, Andean potato mottle virus, Lantana mealybug, Passionvine mealybug, and the rust fungus *Puccinia pampeana*.

One commenter pointed out that there was no record of the presence of any of these pests in Panama; therefore, the NPPO of Panama should not be required to inspect for them.

Because the pest risk assessment (PRA) completed in relation to the importation of peppers from certain Central American countries was a regional PRA, the pest list includes those 12 pests of quarantine significance present in Central America, including Costa Rica, El Salvador, Guatemala, Honduras, Panama, and Nicaragua. We recognize that not all of the pests listed in the regulations may be present in each of those countries. The systems approach for the importation of peppers from each country includes the submission of a bilateral workplan to the Animal and Plant Health Inspection Service (APHIS) by the NPPO of each exporting country. That workplan will include the specific pests of concern for which inspection will be required as listed by country in the PRA. In this final rule, we are amending paragraphs (a)(2), (b)(3)(v), and (c)(3)(v) of the regulations, which provide for the pre-harvest inspections, to reflect this process.

Mitigation Measures for Pea Leafminer

One of the pests of concern listed in § 319.56–40 is pea leafminer (*Liriomyza huidobrensis*). A commenter suggested that this pest is of particular concern for purposes of potential infestation and detection for several reasons: Larvae in this family are typically not identified beyond the family level, thus leaving them indistinguishable from other pests in this family during early stages of development; the 1.6 mm screening required to be placed across all openings in the pest-exclusionary greenhouses might not be sufficiently small to exclude the insect; and the pea leafminer's early larval stages and associated mines are relatively small, therefore making their potential detection via inspection at origin and destination problematic.

For those varieties of peppers that are listed in the regulations and imported from areas in which Mediterranean fruit fly (Medfly, *Ceratitis capitata*) and/or Mexican fruit fly (Mexfly, *Anastrepha ludens*) are considered to exist, production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening. The screening requirements listed in the regulations are intended only to provide protection from infestation by Medfly or Mexfly. However, the other mitigation measures established in the systems approach provide protection against a number of pests, including pea leafminer. Those measures include pre-harvest inspection, shipping procedures, and port-of-entry inspection, which provide an appropriate cumulative level of protection.

In reference to the commenter's concern about the difficulty of detecting the presence of pea leafminer based on visual inspection, we are confident that pre-harvest inspections coupled with port-of-entry inspections will prove effective. In addition, pea leafminer infestations principally occur in the leaves and not the fruit of the pepper plant, reducing the risk that imported peppers will be infested with pea leafminer. Finally, the systems approach was established in 2004 to allow for the importation of peppers from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Based on our experience inspecting for pea leafminer in shipments of peppers from those countries, we are confident that we will continue to successfully prevent the entry of any infested shipments.

Inspection

The regulations require that pepper production sites and shipments be inspected prior to harvest by the NPPO for pests of concern. One commenter wanted to know what sort of training the inspectors in Panama were required to undergo.

APHIS has audited Panama's export program, including its inspector training, and has found it is sufficient to meet the conditions set forth in the systems approach in § 319.56–40. In addition, it should be noted that peppers from Panama will be inspected at the port of entry into the United States, providing a check on the efficacy of the inspection in Panama as well as another layer of phytosanitary protection.

Another commenter opposed the proposal, stating that, since sampling for inspection purposes will not be conducted on all of the peppers in each given shipment, the associated risk of pest entry into the United States is too great.

We disagree. The rate at which sampling is conducted has been determined to detect a 1 to 2 percent level of infestation with a 95 percent rate of confidence. Further, inspection of samples of peppers is only one element of the established systems approach. We are confident that the systems approach in § 319.56–40 will effectively mitigate the risk associated with peppers imported from Panama.

General Comments

One commenter asked what specific measures would be enacted to ensure that the phytosanitary requirements for shipments of peppers from Panama would be properly monitored and met.

For those areas where Medfly or Mexfly are considered to exist, the systems approach provides that APHIS will maintain oversight of the program by participating in the approval and monitoring of production sites and by reviewing the trapping records that

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0002.*

must be maintained for each site. For shipments of peppers from those areas that are free of Medfly or Mexfly, port-of-entry inspections will be conducted. If, through trapping records, site visits, or port-of-entry inspections, we find that any of the required mitigation measures are not being properly administered, we will suspend shipments from the offending sites.

Another commenter observed that the measures established as elements of the systems approach were not individually preventative. An additional commenter stated that APHIS should not allow any commodities to enter the United States without treatment.

Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified. Accordingly, each individual measure assigned under a systems approach is designed to work in concert with at least one other element of the systems approach to achieve the appropriate level of phytosanitary security. We are confident that the systems approach in § 319.56–40 will effectively mitigate the risk associated with peppers imported from Panama, as it has for peppers from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

One commenter, from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the proposal of any rulemakings such as the one finalized by this document.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. To that end, we are currently considering ways to facilitate further stakeholder involvement, including site visits, during the initial stages of the development of PRAs. However, since this comment relates to the structure of APHIS's overall risk analysis process, and not to the importation of peppers from Panama, it is outside the scope of the current rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Panama exported an average of about 20 metric tons (MT) of peppers to the United States annually from 1998 to 2001. The United States has not imported peppers from Panama since 2001. In the economic analysis, we model three levels of pepper exports to the United States from Panama, of increasing magnitude: (i) 20 MT; (ii) the maximum annual quantity exported by Panama to all countries in the most recent years it had export data (29 MT); and (iii) 10 times the maximum quantity exported (290 MT). The largest assumed level of U.S. imports is less than 0.02 percent of average annual U.S. consumption. Even when assuming the largest import quantity and no displacement of imports from other countries, the welfare loss for U.S. small-entity producers would be equivalent to less than 0.05 percent of their average revenue. U.S. producers of peppers are predominantly small. Other small entities that could be affected by the rule include fresh pepper importers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows peppers to be imported into the United States from Panama. State and local laws and regulations regarding peppers imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–40 is amended by revising the introductory text and paragraphs (a)(2), (b)(3)(v), and (c)(3)(v) to read as follows:

§ 319.56–40 Peppers from certain Central American countries.

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) * * *

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for those pests listed in the bilateral workplan provided to APHIS by the NPPO of the exporting country, including any of the following pests: The weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, lantana mealybug, passionvine mealybug, melon thrips, bacterial wilt, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato severe leaf curl virus. If any of the pests listed in the workplan are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

* * * * *

(b) * * *

(3) * * *

(v) The greenhouse must be inspected prior to harvest for those pests listed in the bilateral workplan provided to APHIS by the NPPO of the exporting country, including any of the following pests: The weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, lantana mealybug, passionvine

mealybug, melon thrips, bacterial wilt, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato severe leaf curl virus. If any of pests listed in the workplan, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

* * * * *

(c) * * *

(3) * * *

(v) The greenhouse must be inspected prior to harvest for those pests listed in the bilateral workplan provided to APHIS by the NPPO of the exporting country, including any of the following pests: The weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, lantana mealybug, passionvine mealybug, melon thrips bacterial wilt, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato severe leaf curl virus. If any of the pests listed in the workplan, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

* * * * *

Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21522 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2008–0112]

RIN 0579–AD31

Importation of Horses From Contagious Equine Metritis-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of enforcement and reopening of comment period.

SUMMARY: We are reopening the comment period for an interim rule that amended the regulations regarding the testing requirements for importation of horses from countries affected with contagious equine metritis. We are also delaying the enforcement of all provisions of the interim rule until a final rule is published and effective. This action will allow interested persons additional time to comment on the interim rule and provide the Animal and Plant Health Inspection Service with time to make adjustments to the interim rule that may be necessary in order to successfully implement it.

DATES: Enforcement of the interim rule amending 9 CFR part 93, published at 76 FR 16683–16686 on March 25, 2011, and delayed until July 25, 2011, in a document published at 76 FR 31220–31221 on May 31, 2011, is delayed until further notice. We will consider all comments that we receive on or before September 7, 2011. APHIS will publish a document in the **Federal Register** announcing any future action.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2008-0112-0020.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0112, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0112* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Buck, Senior Staff Veterinarian, Equine Imports, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. "Subpart C—Horses," §§ 93.300 through 93.326, pertains to the importation of horses into the United States. Sections 93.301 and 93.304 of the regulations contain specific provisions for the importation of horses from regions affected with contagious equine metritis (CEM), which is a highly contagious venereal disease of horses and other equines caused by an infection with the bacterium *Taylorella equigenitalis*.

On March 25, 2011, we published an interim rule in the **Federal Register** (76 FR 16683–16686, Docket No. APHIS–2008–0112) to amend the regulations regarding the importation of horses from countries affected with CEM by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. The provisions of the interim rule became effective upon publication.

On May 31, 2011, we published a document in the **Federal Register** (76 FR 31220–31221, Docket No. APHIS–2008–0112) to delay the enforcement of the interim rule until July 25, 2011. This action was taken after a request was made by affected entities to allow them additional time to adjust their operation procedures.

Delay of Enforcement

Based on comments received following the March 2011 interim rule, we are considering two changes to the interim rule. The interim rule required that three sets of cultures from imported stallions be collected for the detection of the CEM organism, with negative results obtained from at least two sets prior to test breeding. However, based on the comments received, we are considering amending the requirement so that only one set of cultures would be collected from an imported stallion with negative results prior to test breeding. The purpose of culturing a stallion prior to test breeding is to reduce the risk of infecting a test mare. Therefore, test breeding should not take place until negative culture results have been reported. Under the regulations, a stallion may be released from CEM quarantine only if all cultures and tests of specimens from the mares used for test breeding are negative for CEM and all cultures performed on specimens taken from the stallion are negative for CEM.

The interim rule also required that three sets of cultures be collected from imported mares and test mares with an additional culture sample taken from either the distal cervix or the endometrium. Based on the comments received, we are considering replacing that requirement with a provision that would require a culture to be collected from the distal cervix or the

endometrium on the third set of cultures only.

We are reopening the comment period for 15 days to allow additional public comment on the March 2011 interim rule, and we particularly welcome comments on the modifications we are considering to those requirements described above.

Based on our review of the comments received to date, we consider it advisable to delay the enforcement of the interim rule until further notice. This additional time will allow APHIS to consider all comments and make adjustments to the interim rule that may be necessary in order to successfully implement it.

Accordingly, enforcement of the interim rule amending 9 CFR part 93, published at 76 FR 16683–16686 on March 25, 2011, and delayed until July 25, 2011, in a document published at 76 FR 31220–31221 on May 31, 2011, is delayed until further notice.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21524 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 161

[Docket No. APHIS–2006–0093]

RIN 0579–AC04

National Veterinary Accreditation Program; Currently Accredited Veterinarians Performing Accredited Duties and Electing To Participate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment and announcement of end of period for election to participate.

SUMMARY: We are announcing to the public that veterinarians who are currently accredited in the National Veterinary Accreditation Program (NVAP) may continue to perform accredited duties and may elect to continue to participate in the NVAP until October 1, 2011. The regulations indicate that currently accredited veterinarians must elect to continue their participation in the NVAP in order to maintain their accredited status, after which we will confirm their continued participation and notify them of their first renewal date. A previous document announced that currently accredited veterinarians may continue to perform accredited duties until further notice, even if they have not received a date for their first accreditation renewal. That document stated that we would specify a date by which veterinarians would have to elect to participate in a subsequent document.

DATES: *Effective Date:* August 23, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Behre, National Veterinary Accreditation Program, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 851–3401.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR chapter I, subchapter J (parts 160 through 162, referred to below as the regulations), govern the accreditation of veterinarians and the suspension and revocation of such accreditation. These regulations are the foundation for the National Veterinary Accreditation Program (NVAP). Accredited veterinarians are approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, to perform certain regulatory tasks to control and prevent the spread of animal diseases throughout the United States and internationally.

On December 9, 2009 (74 FR 64998–65013, Docket No. APHIS–2006–0093), we published a final rule in the **Federal Register** that amended the regulations to establish two accreditation categories in place of the former single category, to add requirements for supplemental training and renewal of accreditation, and to offer program certifications. The final rule was effective February 1, 2010, a date intended to give us time to prepare to implement the new regulations, which affect about 71,000 veterinarians who are currently accredited.

Section 161.3 of the final rule contained the requirements for supplemental training and renewal of accreditation. Because accredited veterinarians have not previously been required to renew their accreditation or complete supplemental training, we established in paragraph (d) of § 161.3 a process allowing currently accredited veterinarians to determine whether they wished to continue to participate in the NVAP.

Paragraph (d) of § 161.3 states that veterinarians who are accredited as of February 1, 2010, may continue to perform accredited duties between February 1, 2010, and the date of their first renewal. In accordance with paragraph (d), APHIS provided notice for 3 months to accredited veterinarians who were accredited as of February 1, 2010, to notify them that they must elect to participate in the NVAP as a Category I or Category II veterinarian. Paragraph (d) requires veterinarians to elect to continue to participate within 3 months of the end of the notification period, or their accredited status will expire.

Paragraph (d) of § 161.3 goes on to state that when APHIS receives notice from an accredited veterinarian that he or she elects to participate, APHIS will notify the accredited veterinarian of his or her date for first renewal. The accredited veterinarian must then complete all the training requirements for renewal, as described in § 161.3, by his or her first renewal date. The notification of the first renewal date was thus intended to be the means by which APHIS notifies an accredited veterinarian that we have received notice that he or she has elected to participate and can thus continue performing accredited duties.

In a notice published in the **Federal Register** and effective on September 28, 2010 (75 FR 59605–59606, Docket No. APHIS–2006–0093), we announced that currently accredited veterinarians may continue to perform accredited duties until further notice, even if they have not received a date for their first accreditation renewal from APHIS. We stated that we would also allow currently accredited veterinarians to continue to elect to participate in the NVAP. We took this action because logistical difficulties had prevented us from processing the elections to participate of all the currently accredited veterinarians (over 50,000) who elected to participate. We stated that, when we are closer to reaching the goal of processing those elections, we would publish another document in the **Federal Register** that would amend § 161.3(d) to indicate the date by which veterinarians must elect to continue to participate in the NVAP.

We have determined that setting a deadline of October 1, 2011, will allow adequate time for currently accredited veterinarians to elect to continue participating, if they wish to do so, and for us to process the elections to participate that we have received to this point and any further elections to participate that may be submitted by that date. Accordingly, this document amends § 161.3(d) to indicate that currently accredited veterinarians must elect to participate by October 1, 2011.

A Web seminar on the revisions to the NVAP and how to elect to participate is

available at *mms://ocbmtcwmp.usda.gov/content/aphis/aphis21.wmv.*

List of Subjects in 9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we are amending 9 CFR part 161 as follows:

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

■ 1. The authority citation for part 161 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

§ 161.3 [Amended]

■ 2. In § 161.3, paragraph (d) is amended by removing the words "within 3 months of the end of the notification period" and adding the words "by October 1, 2011" in their place.

Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21526 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–65148; File No. S7–02–11]

RIN 3235–AK89

Suspension of the Duty To File Reports for Classes of Asset-Backed Securities Under Section 15(D) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Securities Exchange Act of 1934 for asset-backed securities issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. We are adopting rules to provide certain thresholds for suspension of the reporting obligations for asset-backed securities issuers. We are also amending our rules relating to the Exchange Act reporting obligations of asset-backed securities issuers in light of these statutory changes.

DATES: *Effective Date:* September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Steven Hearne, Special Counsel, in the Office of Rulemaking, at (202) 551–3430 or Kathy Hsu, Chief, Office of Structured Finance, Division of Corporation Finance, at (202) 551–3850, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 12h–3, 12h–6, and 15d–22 [1] and Form 15 [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3]

I. Background and Overview of the Amendments

Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") [4] eliminated the automatic suspension of the duty to file under Section 15(d) [5] of the Exchange Act for asset-backed securities ("ABS") issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. We proposed amendments on January 6, 2011 to provide for the suspension of reporting obligations for ABS issuers under certain circumstances and to revise our rules in light of the amendment of Exchange Act Section 15(d).[6] In this release, we are adopting the rule amendments with some changes to reflect comments we received on the proposed amendments.

Exchange Act Section 15(d) generally requires an issuer with a registration statement that has become effective pursuant to the Securities Act of 1933 [7] ("Securities Act") to file ongoing Exchange Act reports with the Commission. Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than 300 persons. As a result, the reporting obligations of ABS issuers,[8] other than those with master trust structures,[9] were generally suspended after the ABS issuer filed one annual report on Form 10–K because the number of record holders was below, often significantly below, the 300 record holder threshold.[10]

The Act removed any class of ABS from the automatic suspension provided in Exchange Act Section 15(d) by inserting the phrase, "other than any class of asset-backed securities." Consequently, ABS issuers no longer automatically suspend reporting under Exchange Act Section 15(d). Instead, the Act granted the Commission authority to "provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors." [11]

We proposed new Exchange Act Rule 15d–22(b) to provide for suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) under certain limited circumstances. In addition, we proposed to update Exchange Act Rule 15d–22 to indicate when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown.

We received seven comment letters in response to the proposed

[1] 17 CFR 240.12h–3, 17 CFR 240.12h–6, and 17 CFR 240.15d–22.

[2] 17 CFR 249.323.

[3] 15 U.S.C. 78a *et seq.*

[4] Pub. L. 111–203 (July 21, 2010).

[5] 15 U.S.C. 78o(d).

[6] Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934, Release No. 34–63652 (Jan. 6, 2011) [76 FR 2049] (the "Proposing Release").

[7] 15 U.S.C. 77a *et seq.*

[8] ABS offerings are typically registered on shelf registration statements and each ABS offering is typically sold in a separate "takedown" off of the shelf. In 2004, the Commission adopted Exchange Act Rule 15d–22 relating to ABS reporting under Exchange Act Section 15(d). Exchange Act Rule 15d–22 codified the staff position regarding the starting and suspension dates for any reporting obligation with respect to a takedown of ABS and clarified that a new takedown for a new ABS offering off the same shelf registration statement did not necessitate continued reporting for a class of securities from a prior takedown that was otherwise eligible to suspend reporting. *See* Asset-Backed Securities, Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506] (the "ABS Adopting Release").

[9] In a securitization using a master trust structure, the ABS transaction contemplates future issuances of ABS backed by the same, but expanded, asset pool that consists of revolving assets. Pre-existing and newly issued securities would therefore be backed by the same expanded asset pool. Thus, given their continued issuance, master trust ABS issuers typically continue to report, even after the first annual report is filed.

[10] One source noted that in a survey of 100 randomly selected asset-backed transactions, the number of record holders provided in reports on Form 15 ranged from two to more than 70. The survey did not consider beneficial owner numbers. *See* Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform*, May 2009, at fn. 349.

[11] 15 U.S.C. 78o(d)(2).

amendments.[12] These letters came from four professional associations, a law firm, an individual and an institutional investor. We have reviewed and considered all of the comments that we received on the proposed amendments. Most commentators supported the Commission's goal of providing full and transparent disclosure to investors in ABS. Comments on the proposal were mixed. Two commentators supported the proposed standard without revisions.[13] Other commentators suggested revisions to the proposed standard, which are described below.[14] Further, two commentators recommended permitting commercial mortgage-backed securities to suspend reporting after one year.[15] The adopted rules reflect changes made in response to comments. We explain our revisions with respect to each proposed rule amendment in more detail throughout this release.

II. Discussion of the Amendments

As indicated above, Exchange Act Section 15(d), as amended by the Act, establishes an ongoing reporting obligation for each class of ABS for which an issuer has filed a registration statement that has become effective pursuant to the Securities Act. Exchange Act Section 15(d) also grants the Commission authority to provide for the suspension or termination of the duty to file. We are adopting amendments with changes made in response to comments to provide limited relief from these reporting obligations in a manner that we believe is appropriate in the public interest and consistent with the protection of investors. In addition, we are adopting rule and form amendments, substantially as proposed, to update our rules relating to ABS takedowns under a shelf registration statement.

A. Suspension of Exchange Act Section 15(d) Reporting Obligation

1. Proposed Amendments

In the Proposing Release, we proposed amended Exchange Act Rule 15d–22(b) to provide for suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) under certain limited circumstances.[16] As revised by the Act, Exchange Act Section 15(d) no longer provides for the automatic suspension of the duty to file periodic and other reports for issuers of a class of ABS. Without action by the Commission, ABS issuers that have filed a registration statement that has become effective pursuant to the Securities Act or that have conducted a takedown off of a shelf registration statement, would be obligated to continue to file such reports for the life of the security.

In the Proposing Release, we noted that post-issuance reporting of information by an ABS issuer provides investors and the market with transparency regarding many aspects of the ongoing performance of the securities and the servicer in complying with servicing criteria and that such transparency is valuable in evaluating transaction performance and making ongoing investment decisions. We also indicated our belief that the benefits of ongoing reporting to investors and the market where there are only affiliated holders of the ABS are limited and would not justify the burden of reporting by those issuers. Consequently, we proposed amended Exchange Act Rule 15d–22(b), which would provide that the reporting obligation regarding any class of ABS is suspended for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any securities of such class held by non-affiliates of the depositor that were sold in the registered transaction. We also proposed to amend Form 15 to add a checkbox for ABS issuers to indicate that they are relying on proposed Exchange Act Rule 15d–22(b) to suspend their reporting obligation alerting the market and the Commission of the change in reporting status.

2. Comments on the Proposed Amendments

Commentators generally supported an amendment that would provide for the suspension of the reporting obligation for ABS.[17] The commentators expressed varying levels of support for the Commission's proposed Exchange Act Rule 15d–22(b):

- Two commentators supported the proposal without changes;[18]
- One commentator recommended a more stringent standard;[19]
- One commentator expressed general support for the proposal subject to specific comments on the language of the proposal;[20]
- One commentator suggested expanding the set of circumstances when ABS issuers may suspend reporting;[21] and
- Two commentators suggested allowing suspension for commercial mortgage-backed securities issuers after one year in keeping with the Section 15(d) standard as it existed prior to the adoption of Section 942(a) of the Act amending Exchange Act Section 15(d).[22]

The proposed rule would have required an issuer to assess whether there were any securities held by non-affiliates of the depositor at the beginning of the fiscal year. One commentator recommended accelerating the timing of when an issuer may assess whether it may suspend reporting to enable an issuer to suspend reporting once there are no non-affiliated holders or in the alternative, monthly.[23] In addition, this commentator recommended that the Commission amend the proposed rule to clarify that, at such time as none of an issuer's registered ABS remain outstanding, the issuer may immediately cease ongoing Exchange Act reporting.[24] In contrast, some commentators supported the

[12] The public comments we received are available on our Web site at *http://www.sec.gov/comments/s7-02-11/s70211.shtml*. *See* letters from the American Securitization Forum ("ASF"), Chris Barnard ("Barnard"), Cleary, Gottlieb, Steen, & Hamilton LLP ("Cleary"), CRE Finance Council ("CREFC"), Investment Company Institute ("ICI"), MetLife, Inc. ("MetLife"), and Mortgage Bankers Association ("MBA").

[13] *See* letters from ICI and Barnard.

[14] *See* letters from ASF, Cleary and MetLife.

[15] *See* letters from CREFC and MBA. These commentators recommended that such securities be permitted to suspend reporting under the old Section 15(d) standard, which previously allowed issuers of securities to suspend Exchange Act reporting typically after the first year of reporting. In support of differential treatment, the commentators pointed to the "Annex A" initial disclosure package and the "Investor Reporting Package" used in the commercial mortgage-backed securities market, suggesting these materials, along with certain "best practices" projects, provide most, if not all, of the information that would be required to be included in the Section 15(d) reports, and such materials are required to be provided to investors on a timely basis under the Investor Reporting Package standards.

[16] *See* the Proposing Release *supra* note 6.

[17] *See* letters from ASF, Barnard, Cleary, CREFC, ICI, MetLife, and MBA.

[18] *See* letters from Barnard and ICI.

[19] *See* letter from MetLife recommending permitting suspension "only if (a) ABS of a particular class are no longer held by non-affiliates of the depositor and (b) the transaction has matured (i.e. the collateral has been liquidated from the trust or otherwise been fully amortized) or been redeemed or called by the servicer."

[20] *See* letter from ASF recommending various changes to the proposed language discussed in more detail below.

[21] *See* letter from Cleary recommending permitting suspension or termination of reporting in two additional circumstances: (1) Where an ABS is backed by a sufficient concentration of obligations of an entity (*e.g.*, repackagings) and reference information under Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)) is unavailable and (2) where investors voted for termination after a period of public reporting.

[22] *See* letters from CREFC and MBA.

[23] *See* letter from ASF.

[24] *Id.*

timing of the assessment,[25] and one commentator recommended requiring an issuer to re-assess its reporting obligation, including after suspension, every six months and further recommended including an anti-avoidance provision.[26]

Some commentators recommended specific revisions to the proposed text of the rule. The proposed rule would have provided that the issuer may not suspend reporting in the "fiscal year within which the registration statement became effective." One commentator recommended that the Commission revise the language to instead refer to the "fiscal year within which the takedown occurred" to provide additional clarity on the application of the rule as it relates to shelf offerings.[27] In addition, the proposed rule would provide for suspension of reporting obligations in any fiscal year when there "are no longer any securities of such class held by non-affiliates of the depositor." Two commentators noted that ABS are often held of record by a custodian or broker on behalf of underlying beneficial owners and suggested that the test should look to the underlying beneficial owners of the securities.[28] In addition, one commentator recommended using the term "are not" rather than saying there "are no longer" any securities of such class held by non-affiliates of the depositor that were sold in the registered transaction to avoid any implication that the ABS must have been previously held by one or more non-affiliates.[29]

3. Final Rule

After considering the comments, we are adopting amendments to our rules to provide for suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) as proposed with some changes as recommended by commentators. As adopted, Exchange Act Rule 15d–22(b) provides that the duty to file annual and other reports under Section 15(d) is suspended:

- As to any semi-annual fiscal period, if, at the beginning of the semi-annual fiscal period, other than a period in the fiscal year within which the registration statement became effective or, for shelf offerings, the takedown occurred, there are no ABS of such class that were sold in a registered transaction held by non-affiliates of the depositor and a certification on Form 15 has been filed;[30] or
- When there are no ABS of such class that were sold in a registered transaction still outstanding, immediately upon the filing with the Commission of a certification on Form 15 if the issuer has filed all required reports for the most recent three fiscal years.[31]

In addition, the final rule amends Form 15 to add a checkbox for ABS issuers to indicate that they are relying on Exchange Act Rule 15d–22(b) to suspend their reporting obligation and adds two Notes to paragraph (b). Note 1 indicates that securities held of record by a broker, dealer, bank or nominee shall be considered as held by the separate accounts for which the securities are held. Note 2 includes an anti-avoidance provision, as described below.

In response to comments, Exchange Act Rule 15d–22(b) has been changed from the proposal in the following ways:

- The final rule provides for the timing of the suspension of the duty to file to be tested at the beginning of the semi-annual fiscal period rather than annually as proposed. The semi-annual assessment provided in the final rule requires an issuer to assess whether it is required to report more often than the proposed rule. The increased frequency of the required assessment seeks to alleviate concerns regarding reporting and information gaps that could occur with annual assessments by making it harder to evade the reporting requirements as well as reduce costs imposed by requiring reporting for the remainder of the year when the ABS are held solely by affiliates of the depositor.[32] We do not believe more frequent assessments to allow suspension are appropriate because if conducted more frequently, these assessments might result in an ABS issuer frequently changing its reporting status and thereby result in less continuity in its annual and other reports and the creation of disclosure gaps that could be detrimental to investors' ability to evaluate ABS performance and make ongoing investment decisions.
- The final rule provides that an issuer of ABS may not suspend reporting "in the fiscal year within which the registration statement became effective, or, for offerings conducted pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(x), the takedown for the offering occurred." The language was revised in response to comments to provide additional clarity on the application of the rule as it relates to shelf offerings.[33]
- The final rule uses the term "there are no asset-backed securities" rather than the proposed "there are no longer any asset-backed securities" to avoid any implication that the ABS must have been held by one or more non-affiliates.[34]
- The final rule specifically provides for the immediate suspension upon filing of a Form 15 of the duty to file when there are no ABS of a class that were sold in a registered transaction still outstanding subject to conditions that are consistent with similar conditions in Exchange Act Rule 12h–3.[35] As requested, the final rule makes clear that an issuer may immediately suspend reporting when the securities have been retired or fully paid. In providing for immediate suspension in our rules, we have also added obligations that are consistent with similar conditions in Exchange Act Rule 12h–3 and may help reduce possible confusion or gaps in reporting that could occur with an immediate suspension of reporting.
- The final rule adds a Note to paragraph (b) of Exchange Act Rule 15d–22 clarifying that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers are considered held by the separate accounts for which they are held. Thus, if an investment bank is an ABS issuer and holds

[25] See letters from Barnard and ICI.

[26] See letter from MetLife. MetLife expressed concern that there are possible scenarios where a depositor or its affiliates could potentially acquire all registered ABS securities of a particular class that were not held by such entities prior to the Section 15(d) re-assessment determination date and then re-sell such securities to non-affiliates in secondary transactions during the course of the fiscal year.

[27] See letter from ASF.

[28] See letters from ASF and MetLife.

[29] See letter from ASF.

[30] The final rule clarifies that the issuer must make its determination as of the beginning of the semi-annual fiscal period and file a certification on Form 15 in the semi-annual fiscal period within which the issuer suspends its reporting obligation.

[31] The final rule, consistent with Exchange Act Rule 12h–3, also states that if the certification on Form 15 is withdrawn or denied, the issuer is obligated, within 60 days, to file all reports that would have been required if such certification had not been filed. The final rule provides conditions for the immediate suspension of reporting that are not required when the issuer suspends reporting after its semi-annual assessment that may help to reduce confusion or gaps in reporting upon immediate suspension and are consistent with the conditions established under Exchange Act Rule 12h–3.

[32] See letters from ASF and MetLife. The final rule requires ABS issuers, like other issuers that must comply with Section 15(d), to assess periodically whether they may suspend their duty to file. Pursuant to Section 15(d) and our rules, issuers may be permitted to suspend their duty to file after one assessment, but may be required to recommence reporting after a subsequent assessment.

[33] See letter from ASF.

[34] See letter from ASF.

[35] See letter from ASF.

securities in its name for the benefit of other non-affiliated investors, it cannot suspend reporting. Conversely, if an unaffiliated bank or broker holds ABS for affiliates of the ABS issuer, the unaffiliated status of the broker or bank will not preclude suspension of reporting.[36]

• The final rule adds a Note to paragraph (b) of Exchange Act Rule 15d–22(b) providing that an issuer may not suspend reporting if securities are acquired and resold by affiliates as part of a plan or scheme to evade the reporting obligations of Section 15(d).[37]

The proposal and the final rules that we are adopting today sought to provide for the suspension of the reporting obligation for a given class of ABS under limited circumstances. Two commentators requested that commercial mortgage-backed securities issuers be permitted to suspend reporting based on the use of their industry reporting standards.[38] We are not adopting those recommendations because we believe that there are benefits to investors and the market of uniform disclosure standards provided by Regulation AB and public access to such uniform disclosure, and that such an approach is more consistent with Exchange Act Section 15(d), as amended by the Act. In addition, we are not adopting another commentator's recommendations to permit suspension of reporting for repackaging ABS where reference issuers stop reporting or to permit suspension where requested by a majority of holders.[39] We are not adopting the recommendation regarding repackaging transactions because the concentration of the significant obligor in the asset pool makes the information material. The need for the information about the underlying issuer in the reports for the ABS does not change due to a change in the reporting status of the underlying issuer.[40] In addition, we are not adopting the recommendation to permit suspension where requested by a majority of investors because any such suspension would limit the information available to investors and the marketplace for ABS with non-affiliated holders and could result in a reduction of the minority holders ability to sell and the price at which they may be able to sell their securities.

[36] *See* letter from ASF and MetLife.

[37] *See* letter from MetLife and note 26. This change should address the concern described by MetLife.

[38] *See* letters from CREFC and MBA.

[39] *See* letter from Cleary.

[40] See the ABS Adopting Release at 1554.

B. Revisions to Existing Exchange Act Rule Provisions

In light of the statutory changes to Exchange Act Section 15(d), we proposed to revise Exchange Act Rule 15d–22 to indicate when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown. We also proposed to amend Exchange Act Rule 12h–3(b)(1) to conform the rule to the language of amended Exchange Act Section 15(d) and to add a clarifying note.

1. Proposed Amendments

We proposed to amend Exchange Act Rule 15d–22 to retain the approach relating to separate takedowns in current Exchange Act Rules 15d–22(a) and 15d–22(b) in a revised Exchange Act Rule 15d–22(a). Under the amendments we proposed, Exchange Act Rule 15d–22(a)(1) would provide that with respect to an offering of ABS sold off the shelf pursuant to Securities Act Rule 415(a)(1)(x),[41] the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities commences upon the first bona fide sale in a takedown of securities under the registration statement. Under the amendments we proposed, Exchange Act Rule 15d–22(a)(2) would establish that the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities is determined separately for each takedown of securities under the registration statement. Exchange Act Rule 15d–22(c) would remain substantially unchanged, except for minor revisions to reflect the amendments discussed above. Finally, under the amendments we proposed, Exchange Act Rule 12h–3(b)(1) would exclude ABS from the classes of securities eligible for suspension (tracking the language of the Exchange Act) and a note would be added to Exchange Act Rule 12h–3 to direct ABS issuers to Exchange Act Rule 15d–22 for the requirements regarding suspension of reporting for ABS.

2. Comments on the Proposed Amendments

Commentators expressed general support, and no commentators provided specific comment on these proposed revisions.[42]

3. Final Rule

After further consideration, we are adopting the amendments to our rules relating to when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown substantially as proposed.[43] We are also adopting the changes to Exchange Act Rule 12h–3(b)(1) to conform the rule to the language of amended Exchange Act Section 15(d), and provide a clarifying note to Exchange Act Rule 12h–3(b)(1) as proposed. In addition to the changes to Exchange Act Rule 12h–3 that we proposed, we are adding a clarifying note to Exchange Act Rule 12h–6 directing foreign private issuers that are ABS issuers to Exchange Act Rule 15d–22 for the requirements regarding suspension of reporting of ABS.

[41] 17 CFR 230.415(a)(1)(x).

[42] *See* letters from ASF and Barnard.

[43] As adopted we are including a reference to Securities Act Rule 415(a)(1)(vii).

III. Paperwork Reduction Act

A. Background

Certain provisions of the disclosure rules and forms applicable to ABS issuers contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[44] The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release for the amendments, and submitted these requirements to the Office of Management and Budget for review in accordance with the PRA.[45] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the affected collections of information are:

(1) "Form 10–K" (OMB Control No. 3235–0063);

(2) "Form 10–D" (OMB Control No. 3235–0604);

(3) "Form 8–K" (OMB Control No. 3235–0288); and

(4) "Form 15" (OMB Control No. 3235–0167).

Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the collections of information.

Our PRA burden estimate for Form 10–K, Form 8–K and Form 15 is based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare the collection of information. Form 10–D is a form that is only prepared and filed by ABS issuers. Form 10–D is filed within 15 days of each required distribution date on the ABS,

[44] 44 U.S.C. 3501 *et seq.*

[45] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

as specified in the governing documents for such securities, containing periodic distribution and pool performance information.

Our PRA burden estimates for the collections of information are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used by ABS issuers, as well as information from outside data sources.[46] In the Proposing Release, we based our estimates on an average of the data that we have available for years 2004 through 2009. In some cases, our estimates for the number of ABS issuers that file Form 10–D with the Commission are based on an average of the number of ABS offerings in 2006 through 2009.[47]

In the Proposing Release we requesfed comment on the PRA analysis. No commentators responded to our request for comment on the PRA analysis. Subsequent to the enactment of the Act, the number of Forms 10–K, 8–K and 10–D filed by ABS issuers is expected to increase each year by the number of ABS registered offerings and the number of Forms 15 filed by ABS issuers is expected to decrease by a similar number.

The amendments provide for ABS issuers to suspend their reporting obligation under certain circumstances. While we expect that some issuers will be able to suspend their reporting obligations in the future as a result of the rules we adopt today, for purposes of the PRA, we estimated that the proposal will not affect our PRA estimates over the next three years.[48] We also estimated that the amendments to Exchange Act Rule 15d–22 relating to reporting and shelf registration and Exchange Act Rule 12h–3 to conform the rule to Exchange Act Section 15(d) will not affect our PRA estimates.

The amendments are generally consistent with our proposals, although the amendments do provide for semi-annual assessment, rather than an annual assessment, and provide for immediate suspension of reporting when there are no outstanding ABS. We do not believe that the changes from our proposal will affect our PRA estimates.

As indicated above, we do not estimate that the final rules will affect our PRA estimates over the next three years, however, as explained in further detail in the Proposing Release, the Act's amendment to Section 15(d) is expected to effect the number of periodic and current reports and Forms 15 filed by ABS issuers each year.

We are revising our estimates to reflect 2010 data regarding ABS filings. In the Proposing Release we based our estimates for the number of ABS issuers on an average of the data that we have available for years 2004 through 2009. The yearly average of ABS registered offerings with the Commission over the period from 2004 to 2009 was 958. The yearly average of ABS registered offerings with the Commission over the period from 2005 to 2010, a similar 6-year period, was 751.[49] As a result, for PRA purposes, we are updating our estimates of annual increases in Form 10–K filings to 751 filings,[50] in Form 10–D filings to 4,506 filings,[51] and in Form 8–K to 1,127 filings[52] and reducing the annual decrease in Form 15 filings to 751 filings.[53] In addition, consistent with our estimate in the Proposing Release that an average of six Form 10–D filings will be filed annually instead of ten Form 10–D filings, which forms the basis of the current PRA inventory for Form 10–D, we are reducing our current inventory of annual responses to Form 10–D to reflect the new annual estimate.

In summation, we estimate, for PRA purposes, increases of 90,120 total burden hours for Form 10–K (751 Forms 10–K times 120 burden hours per filing), 135,180 total burden hours for Form 10–D (4,506 Forms 10–D times 30 burden hours per filing), and 5,635 total burden hours for Form 8–K (1,127 Forms 8–K times 5 burden hours per filing), as well as a decrease of 1,127 total burden hours for Form 15 (751 Forms 15 times 1.5 burden hours per filing) as a result of the statutory changes to Exchange Act Section 15(d).[54] We allocate 75% of those hours (an increase of 67,590 hours for Form 10–K, 101,385 hours for Form 10–D, and 4,226 hours for Form 8–K) to internal burden and the remaining 25% to external costs using a rate of $400 per hour (an increase of $9,012,000 for Form 10–K, $13,518,000 for Form 10–D and $563,500 for Form 8–K). In addition, we estimate, for PRA purposes, a decrease in total burden hours due to a change in agency estimate of the number of annual Form 10–D filings of 120,000 (4,000 Form 10–D filings times 30 burden hours per filing). We allocate 75% of those hours to internal burden (a decrease of 90,000) and the remaining 25% to external costs using a rate of $400 per hour (a decrease of $12,000,000).

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports for ABS issuers as a result of the statutory changes mandated by the Act as well as the reduction in the estimated number of Form 10–D filings described above.

[46] We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

[47] Form 10–D was not implemented until 2006. Before implementation of Form 10–D, ABS issuers often filed their distribution reports under cover of Form 8–K.

[48] Since historical data on the numbers of classes of ABS that reduce their non-affiliated holders to zero is not generally available, we are using statistics relating to average expected deal life to establish our PRA estimate. Statistics compiled from SDC Platinum suggest that the average expected deal life of a class of ABS is over 5 years.

[49] We have chosen to continue using a six year average to estimate the number of ABS registered offerings despite the significant drop off in filings after 2007. As discussed in the Proposing Release, in order to estimate the number of Forms 10–K, Forms 10–D, Forms 8–K, and Forms 15 filed by ABS issuers for PRA purposes, we average the estimate of the number of those forms over three years. For the first year of our average, we are using an updated number of 751 as an estimate for the number of issuers we expect to file Forms 10–K, Forms 10–D and Forms 8–K. In the second year, we increase our estimate by 751 to a total of 1,502 and in the third year, the addition of another 751 brings the total to 2,253. The average number of issuers that we expect to file forms over three years would, therefore, be 1,502, however 751 of those issuers would have filed forms prior to the statutory change. We reduce the estimated increase by 751 to account for those issuers. We are therefore increasing our estimate by 751 issuers to account for the increase in the number of issuers that will be required to file reports as a result of the statutory change. *See* the Proposing Release *supra* note 6 at note 30.

[50] As discussed above, we estimate that an additional 751 issuers will be required to file reports as a result of the statutory change. We continue to estimate that each ABS issuer would have one annual Form 10–K filing.

[51] We continue to estimate that each ABS issuer would have six annual Form 10–D filings resulting in 4,506 additional Form 10–D filings (751 ABS issuers x 6 filings) as a result of the statutory change.

[52] We continue to estimate that each ABS issuer would have 1.5 annual Form 8–K filings resulting in 1,127 additional Form 8–K filings (751 ABS issuers x 1.5 filings) as a result of the statutory change.

[53] As indicated in the Proposing Release, we assume that in any given year the issuers of all registered ABS issued in the prior year would have suspended reporting using Form 15. After the implementation of the Act, issuers are no longer able to automatically suspend reporting; therefore, Form 15 will no longer be used by these ABS issuers as it was in the past. As a result, for the purposes of PRA, we estimate a decrease in Form 15 filings of 751.

[54] We allocate all of the burden for Form 15 filings to internal burden hours.

Form	Current annual responses	Proposed annual responses	Current burden hours	Decrease or increase in burden hours	Proposed burden hours	Current professional costs	Decrease or increase in professional costs	Proposed professional costs
10–K	13,545	14,296	21,363,548	67,590	21,431,138	$2,848,473,000	$9,012,000	$2,857,485,000
10–D	10,000	10,506	225,000	11,385	236,385	30,000,000	1,518,000	31,518,000
8–K	115,795	116,922	493,436	4,226	497,662	54,212,000	563,500	54,775,500
15	3,000	2,249	4,500	(1,127)	3,373	0	0	0

IV. Benefit-Cost Analysis

Exchange Act Section 15(d) generally establishes an ongoing reporting obligation for issuers with a registration statement that has become effective pursuant to the Securities Act. Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than 300 persons. The Act amended Exchange Act Section 15(d) to eliminate the automatic suspension of the duty to file ongoing Exchange Act reports for ABS issuers and granted the Commission authority to issue rules providing for the suspension or termination of such duty. The Commission is exercising its authority under the Exchange Act, as amended by the Act, by amending Exchange Act Rules 12h–3, 12h–6 and 15d–22 to provide for the suspension of the duty to file for certain ABS issuers and reduce their compliance costs as discussed in this release.[55]

The Commission is sensitive to the benefits and costs imposed by the rules it is amending. The discussion below focuses on the benefits and costs of the decisions made by the Commission in the exercise of its new exemptive authority provided by the Act, rather than the costs and benefits of the Act itself.

A. Benefits

The amendments the Commission is adopting allow an issuer to suspend reporting under certain circumstances and update certain provisions relating to reporting obligations under a shelf registration statement. Providing for issuers to suspend reporting would provide the benefit of allowing those issuers that are now required by the Act to continue reporting to avoid the costs of preparing and filing annual and periodic reports with the Commission when only affiliates of the depositor hold any outstanding securities of the classes sold in registered transactions.

We believe that reporting of the ongoing performance of an ABS is useful to investors and the market by providing readily accessible information upon which investors may evaluate performance and make ongoing investment decisions. We also recognize, however, that there are circumstances where the costs do not justify the benefits of reporting to investors and the market. In adopting rules to provide for the suspension or termination of the duty to file for certain ABS issuers, we have sought to balance the value of the information to investors and the market with the burden on the issuers of preparing the reports. More specifically, we believe that when there are only affiliated holders of the ABS, those affiliates will generally be able to receive relevant information because of their relationship with the depositor. Therefore, we are adopting new Exchange Act Rule 15d–22(b) to provide for issuers to suspend their reporting obligation under Section 15(d), as to any semi-annual fiscal period, if, at the beginning of the semi-annual fiscal period, there are no longer ABS of the class that were sold in a registration statement held by non-affiliates of the depositor and a certification on Form 15 has been filed.

We originally proposed that ABS issuers assess annually whether non-affiliates hold the ABS sold in registered transactions. We recognize that there is a trade-off between allowing the assessment to take place too frequently or not frequently enough. If the assessment is conducted frequently, it might result in an ABS issuer changing its reporting status often with the effect of less continuity in its annual and other reports. Reporting gaps could be detrimental to investors' ability to evaluate ABS performance and make ongoing investment decisions. However, more frequent assessments will allow an ABS issuer to report less and cease reporting as soon as non-affiliates no longer hold its securities, thus reducing the issuer's reporting burden and associated costs. Less frequent assessment of whether only affiliates hold the registered ABS issued, might result in unnecessary continued reporting until the assessment is made, up to 12 months for an annual assessment. The new Exchange Act Rule 15d–22(b) allows for semi-annual assessment, which we believe appropriately balances these competing interests.

B. Costs

In revising Exchange Act Section 15(d), Congress exhibited an intent to increase the continued reporting by ABS issuers, but gave the Commission authority to place limitations on that reporting in the public interest. The Commission exercised this authority and is adopting amendments allowing ABS issuers to suspend their reporting obligation under certain limited conditions. Providing for the suspension of reporting limits the ability of market participants to access and review information for those ABS that suspend reporting. We believe that this cost is mitigated under these conditions, since affiliates will generally be able to receive relevant information because of their relationship with the depositor. Thus, only non-holders of a particular ABS are affected. Furthermore, the utility of the information to market participants is limited since ABS owned solely by affiliates generally have no public market.

We recognize that there are additional costs to assessing holders semi-annually and preparing ongoing disclosure for registered transactions relative to the costs of issuing in the private markets. An issuer's decision about whether to issue registered ABS may be affected by the threshold at which issuers may suspend their reporting obligations under Section 15(d). We solicited comments on whether an alternative suspension threshold might mitigate this effect or be more appropriate for other reasons. Although three commentators responded to our request with suggested alternatives, we are not adopting those alternatives, as discussed in Section II.A.3. above. No commentator provided us with data or analysis that would support an alternative threshold. Thus, we continue to believe that a threshold of zero non-

[55] The proposed amendments to Exchange Act Rules 12h–3, 12h–6 and 15d–22(a) and (c) do not substantively alter the current requirements and should help issuers comply with their obligations and avoid confusion.

affiliates is consistent with the Act and presents an appropriate balance between the value of the reported information to investors and the market, and the costs of preparing the reports.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act[56] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[57] requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. The discussion below focuses on the effects of the decisions made by the Commission in the exercise of its new exemptive authority provided by the Act, rather than the effects of the Act itself.

The Act amended Exchange Act Section 15(d) to eliminate the automatic suspension of the duty to file ongoing Exchange Act reports for ABS issuers and granted the Commission authority to issue rules providing for the suspension or termination of such duty. The Commission is exercising its authority under the Act by amending Exchange Act Rules 12h–3, 12h–6 and 15d–22 to provide for the suspension of the duty to file for certain ABS issuers and reduce their compliance costs as discussed in this release.

The amendments update the reporting requirements for takedowns from shelf registration in Exchange Act Rule 15d–22 and provide for the suspension of the duty to file for certain ABS issuers as discussed in this release. Providing for ABS issuers with only affiliated holders to suspend their duty to file decreases transparency regarding those issuers. The suspension of the duty to file reduces compliance costs for issuers, which could increase efficiency and facilitate capital formation.

An inability to suspend the duty to file may encourage some issuers to offer ABS privately or not to issue ABS at all, rather than registering those ABS and incurring the ongoing reporting costs. If issuers register fewer ABS, this would reduce liquidity, decrease transparency in the ABS market and decrease capital formation. The amendments provide for ABS issuers to suspend their duty to file when they have only affiliated investors remaining and provide issuers certainty regarding when they may suspend reporting, which may encourage some ABS issuers to register ABS and offer ABS in the public markets. These changes are intended to mitigate the aforementioned incentives to offer ABS privately or not to issue ABS at all.

The clarifications provided in Exchange Act Rule 15d–22, 12h–3, and 12h–6 may have a beneficial effect on the efficiency of managing ABS offerings, especially takedowns from ABS shelf registration, by providing issuers with a better understanding of their Exchange Act reporting obligations and facilitating compliance.

We do not believe the amendments will have an impact or burden on competition.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act, we certified that, when adopted, the proposals would not have a significant economic impact on a substantial number of small entities. We included the certification in Part IX of the Proposing Release, but received no comment.

VII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the amendments contained in this document under the authority set forth in Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

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

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 2. Amend § 240.12h–3 by:

■ a. In paragraph (b)(1) introductory text adding ", other than any class of asset-backed securities," in the first sentence after "Any class of securities"; and

■ b. Adding a Note to paragraph (b).

The addition reads as follows:

§ 240.12h–3 Suspension of duty to file reports under section 15(d).

* * * * *

(b) * * *

(2) * * *

Note to Paragraph (B): The suspension of classes of asset-backed securities is addressed in § 240.15d–22.

* * * * *

■ 3. Amend § 240.12h–6 by adding a Note after paragraph (i) to read as follows:

§ 240.12h–6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).

* * * * *

(i) * * *

Note to § 240.12h–6: The suspension of classes of asset-backed securities is addressed in § 240.15d–22.

* * * * *

■ 4. Revise § 240.15d–22 to read as follows:

§ 240.15d–22 Reporting regarding asset-backed securities under section 15(d) of the Act.

(a) With respect to an offering of asset-backed securities registered pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(x) of this chapter:

(1) Annual and other reports need not be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of securities to which such registration statement relates until the first bona fide sale in a takedown of securities under the registration statement; and

(2) The starting and suspension dates for any reporting obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) with respect to a takedown of any class of asset-backed securities are determined separately for each takedown of securities under the registration statement.

(b) The duty to file annual and other reports pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of asset-backed securities is suspended:

(1) As to any semi-annual fiscal period, if, at the beginning of the semi-

[56] 15 U.S.C. 78w(a).

[57] 15 U.S.C. 78c(f).

annual fiscal period, other than a period in the fiscal year within which the registration statement became effective, or, for offerings conducted pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(x), the takedown for the offering occurred, there are no asset-backed securities of such class that were sold in a registered transaction held by non-affiliates of the depositor and a certification on Form 15 (17 CFR 249.323) has been filed; or

(2) When there are no asset-backed securities of such class that were sold in a registered transaction still outstanding, immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by Section 13(a), without regard to Rule 12b–25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

Note 1 to Paragraph (b): Securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers shall be considered as held by the separate accounts for which the securities are held.

Note 2 to Paragraph (b): An issuer may not suspend reporting if the issuer and its affiliates acquire and resell securities as part of a plan or scheme to evade the reporting obligations of Section 15(d).

(c) This section does not affect any other reporting obligation applicable with respect to any classes of securities from additional takedowns under the same or different registration statements or any reporting obligation that may be applicable pursuant to section 12 of the Act (15 U.S.C. 78*l*).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend Form 15 (referenced in § 249.323) by:

■ a. Adding a checkbox referring to "Rule 15d–22(b)" after the checkbox referring to "Rule 15d–6"; and

■ b. By revising the first sentence of the Instruction to read: "This form is required by Rules 12g–4, 12h–3, 15d–6 and 15d–22 of the General Rules and Regulations under the Securities Exchange Act of 1934."

Note: The text of Form 15 does not and this amendment will not appear in the Code of Federal Regulations.

By the Commission.

Dated: August 17, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21500 Filed 8–22–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1 and 602

[TD 9547]

RIN 1545–BF05

Election To Expense Certain Refineries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document provides final regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code (Code). These final regulations adopt the temporary regulations with certain modifications to reflect changes to the law made by the Energy Improvement and Extension Act of 2008.

DATES: *Effective Date:* These regulations are effective August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Philip Tiegerman (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number (1545–2103). Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 179C was added to the Code by section 1323(a) of the Energy Policy Act of 2005, Public Law 109–58 (119 Stat. 594), to encourage the construction of new refineries and the expansion of existing refineries to enhance the nation's refinery capacity. Section 179C(a) allows a taxpayer to elect to deduct as an expense 50 percent of the cost of any qualified refinery property. The remaining 50 percent of the taxpayer's qualifying expenditures generally are recovered under section 168 and section 179B, if applicable. All costs properly capitalized into qualified refinery property are includable in the cost of the qualified refinery property.

As originally enacted, section 179C(c)(1)(B) required that qualified refinery property be placed in service by a taxpayer after August 8, 2005, and before January 1, 2012. Under section 179C(c)(1)(F) as originally enacted, (i) the construction of the property must have been subject to a written binding construction contract entered into before January 1, 2008, (ii) the property must have been placed in service before January 1, 2008, or (iii) in the case of self-constructed property, the construction of the property must have begun after June 14, 2005, and before January 1, 2008. Section 179C(d)(1) originally required that a qualified refinery be designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)). Under section 179C(e) as originally enacted, qualified refinery property must have enabled the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis or to process qualified fuels (as defined in section 45K(c)) at a rate that is equal to or greater than 25 percent of the total throughput of the qualified refinery on an average daily basis.

Section 209 of the Energy Improvement and Extension Act of 2008 (the "2008 Act"), Division B, Public Law 110–343 (122 Stat. 3765), amended section 179C in several respects. The 2008 Act extended the placed in service date of section 179C(c)(1)(B) to January 1, 2014. In addition, the 2008 Act amended section 179C(c)(1)(F) to provide that (i) the construction of the property must be subject to a written binding construction contract entered into before January 1, 2010, (ii) the property must be placed in service before January 1, 2010, or (iii) in the case of self-constructed property, the construction of the property must begin

after June 14, 2005, and before January 1, 2010.

Effective for property placed in service after October 3, 2008, the 2008 Act amended the definition of "qualified refinery" under section 179C(d)(1) to include a refinery that is designed to serve the primary purpose of processing liquid fuel directly from shale or tar sands, and expanded the production capacity requirement of section 179C(e)(2) to include property that enables the existing qualified refinery to process shale or tar sands.

On July 9, 2008, the Treasury Department and the IRS published in the **Federal Register** temporary regulations (TD 9412), 73 FR 39230, and a notice of proposed rulemaking (REG–146895–05), 73 FR 39270, by cross-reference to temporary regulations. A public hearing was scheduled for November 20, 2008. The public hearing was cancelled on November 6, 2008 (73 FR 66001) because no written comments or requests to speak were received.

The temporary regulations and proposed regulations are hereby removed and the final regulations adopt the rules of the temporary and proposed regulations with certain revisions, described below, to reflect amendments to the statute made by the 2008 Act.

Explanation of Provisions

Placed in Service and Construction and Written Binding Contract Requirements

Section 1.179C–1T(b)(4) and § 1.179C–1T(b)(7)(i)(A) of the temporary regulations required that qualified refinery property be placed in service by the taxpayer after August 8, 2005, and before January 1, 2012. Section 1.179C–1(b)(4) and § 1.179C–1(b)(7)(i)(A) of the final regulations provide that the property must be placed in service after August 8, 2005, and before January 1, 2014.

Section 1.179C–1T(b)(7)(iii) of the temporary regulations provided that the manufacture, construction, or production of self-constructed property must begin before January 1, 2008. Under § 1.179C–1(b)(7)(iii) of the final regulations, the manufacture, construction, or production of self-constructed property must begin before January 1, 2010.

Under § 1.179C–1T(b)(7)(iii)(C) of the temporary regulations, a component of self-constructed property had to be acquired or self-constructed before January 1, 2008, in order to qualify as qualified refinery property. Section 1.179C–1(b)(7)(iii)(C) of the final regulations provides that the component must be acquired or self-constructed before January 1, 2010.

Qualified Refinery Property

Section 1.179C–1T(b)(2)(i) of the temporary regulations provided that a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing crude oil or qualified fuels. The final regulations add new § 1.179C–1(b)(2)(i)(A) and new § 1.179C–1(b)(2)(i)(B). Section 1.179C–1(b)(2)(i)(A) of the final regulations provides that in the case of property placed in service after August 8, 2005, and on or before October 3, 2008, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels. Section 1.179C–1(b)(2)(i)(B) of the final regulations provides that, in the case of property placed in service after October 3, 2008, and before January 1, 2014, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing liquid fuel from crude oil, qualified fuels, or directly from shale or tar sands.

Production Capacity

Section 1.179C–1T(b)(5)(i) of the temporary regulations generally provided that refinery property is considered to be qualified refinery property if (A) it enables the existing qualified refinery to increase the total volume output by at least 5 percent on an average daily basis; or (B) it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of the total throughput on an average daily basis. The final regulations, in § 1.179C–1(b)(5)(i), modify this definition to provide generally that refinery property is considered to be qualified refinery property if (A) it enables the existing qualified refinery to increase the total volume output by at least 5 percent on an average daily basis; (B) in the case of property placed in service after August 8, 2005, and on or before October 3, 2008, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of the total throughput on an average daily basis; or (C) in the case of property placed in service after October 3, 2008, and before January 1, 2014, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing shale, tar sands, or qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis.

Effective/Applicability Date

This section is applicable for taxable years ending on or after August 22, 2011. For taxable years ending before August 22, 2011, taxpayers may apply the proposed regulations published on July 9, 2008, or, in the alternative, may apply these final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563. The collections of information in § 1.179–1(d)(2), (e)(2), and (f) are required by section 179C(b), (g), and (h), respectively, and, therefore, are not imposed by these regulations. Accordingly, they are not subject to the Regulatory Flexibility Act. Only the collection of information in § 1.179–1(d)(3), regarding the revocation of an election under section 179C(a), is imposed by these regulations. It is hereby certified that the collection of information contained in § 1.179–1(d)(3) of the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that although most of the 12 taxpayers who potentially could or would make an election under section 179C(a) will be small entities, it is expected that few, if any, of those 12 taxpayers once having made the election will choose to revoke it. Therefore, the collection of information will not affect a substantial number of small entities. The information required to revoke an election under section 179C(a) consists entirely of a portion of the information required to make the election. Consequently, the economic burden for those taxpayers who choose to revoke the election is minimal in nature and the regulations do not impose any burden in addition to the burden associated with making the election. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 6) does not apply to these regulations.

Drafting Information

The principal author of these regulations is Philip Tiegerman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly 26, CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.179C–1 is added to read as follows:

§ 1.179C–1 Election to expense certain refineries.

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the deduction allowable under section 179C(a) for the cost of any qualified refinery property. The provisions of this section apply only to a taxpayer that elects to apply section 179C in the manner prescribed under paragraph (d) of this section.

(2) *Definitions.* For purposes of section 179C and this section, the following definitions apply:

(i) *Applicable environmental laws* are any applicable federal, state, or local environmental laws.

(ii) *Qualified fuels* has the meaning set forth in section 45K(c).

(iii) *Cost* is the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3), but without regard to the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179C and this section) of the property.

(iv) *Throughput* is a volumetric rate measuring the flow of crude oil, qualified fuels, or, in the case of property placed in service after October 3, 2008, and before January 1, 2014, shale or tar sands, processed over a given period of time, typically referenced on the basis of barrels per calendar day.

(v) *Barrels per calendar day* is the amount of fuels that a facility can process under usual operating conditions, expressed in terms of capacity during a 24-hour period and reduced to account for down time and other limitations.

(vi) *United States* has the same meaning as that term is defined in section 7701(a)(9).

(b) *Qualified refinery property*—(1) *In general.* Qualified refinery property is any property that meets the requirements set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Description of qualified refinery property*—(i) *In general.* Property that comprises any portion of a qualified refinery may be qualified refinery property. For purposes of section 179C and this section, a qualified refinery is any refinery located in the United States that—

(A) In the case of property placed in service after August 8, 2005, and on or before October 3, 2008, is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels; or

(B) In the case of property placed in service after October 3, 2008, and before January 1, 2014, is designed to serve the primary purpose of processing liquid fuel from crude oil, qualified fuels, or directly from shale or tar sands.

(ii) *Nonqualified refinery property.* Refinery property is not qualified refinery property for purposes of this paragraph (b)(2) if—

(A) The primary purpose of the refinery property is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or

(B) The refinery property is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(3) *Original use*—(i) *In general.* For purposes of the deduction allowable under section 179C(a), refinery property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer. Except as provided in paragraph (b)(3)(ii) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, only the capital expenditures incurred by the taxpayer to recondition or rebuild the property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), acquired or self-constructed property that contains used parts will be treated as reconditioned or rebuilt only if the cost of the used parts is more than 20 percent of the total cost of the property.

(ii) *Sale-leaseback.* If any new portion of a qualified refinery is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(4) *Placed-in-service date*—(i) *In general.* Refinery property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2014.

(ii) *Sale-leaseback.* If a new portion of refinery property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(5) *Production capacity*—(i) *In general.* Refinery property is considered qualified refinery property if—

(A) It enables the existing qualified refinery to increase the total volume output, determined without regard to asphalt or lube oil, by at least 5 percent on an average daily basis;

(B) In the case of property placed in service after August 8, 2005, and on or before October 3, 2008, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis; or

(C) In the case of property placed in service after October 3, 2008, and before January 1, 2014, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels, shale, or tar sands to a rate that is at least 25 percent of total throughput on an average daily basis.

(ii) *When production capacity is tested.* The production capacity requirement of this paragraph (b)(5) is determined as of the date the property is placed in service by the taxpayer. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased.

(iii) *Multi-stage projects.* In the case of multi-stage projects, a taxpayer must satisfy the reporting requirements of paragraph (f)(2) of this section,

sufficient to establish that the production capacity requirements of this paragraph (b)(5) will be met as a result of the taxpayer's overall plan.

(6) *Applicable environmental laws*—(i) *In general.* The environmental compliance requirement applies only with respect to refinery property, or any portion of refinery property, that is placed in service after August 8, 2005. A refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify a taxpayer from making the election under section 179C(a) with respect to otherwise qualifying refinery property.

(ii) *Waiver under the Clean Air Act.* Refinery property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

(7) *Construction of property*—(i) *In general.* Qualified property will meet the requirements of this paragraph (b)(7) if no written binding contract for the construction of the property was in effect before June 14, 2005, and if—

(A) The construction of the property is subject to a written binding contract entered into before January 1, 2010;

(B) The property is placed in service before January 1, 2010; or

(C) In the case of self-constructed property, the construction of the property began after June 14, 2005, and before January 1, 2010.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under state law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or the predecessor of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions, or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding, notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the payment amount and design specification of the property to be purchased have not been specified.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire a component does not satisfy the requirements of this paragraph (b)(7), the component is not qualified refinery property.

(iii) *Self-constructed property*—(A) *In general.* Except as provided in paragraph (b)(7)(iii)(B) of this section, if a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for the production of income by the taxpayer), the construction of property rules in this paragraph (b)(7) are treated as met for qualified refinery property if the taxpayer begins manufacturing, constructing, or producing the property after June 14, 2005, and before January 1, 2010. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(7)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for the production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When construction begins.* For purposes of this paragraph (b)(7)(iii), construction of property generally begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances.

(C) *Components of self-constructed property*—(*1*) *Acquired components.* If a binding contract (as defined in paragraph (b)(7)(ii) of this section) to acquire a component of self-constructed property is in effect on or before June 14, 2005, the component does not satisfy the requirements of paragraph (b)(7)(i) of this section, and is not qualified refinery property. However, if construction of the self-constructed property begins after June 14, 2005, the self-constructed property may be qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section), even though the component is not qualified refinery property. If the construction of self-constructed property begins before June 14, 2005, neither the self-constructed property nor any component related to the self-constructed property is qualified refinery property. If the component is acquired before January 1, 2010, but the construction of the self-constructed property begins after December 31, 2009, the component may qualify as qualified refinery property even if the self-constructed property is not qualified refinery property.

(*2*) *Self-constructed components.* If the manufacture, construction, or production of a component fails to meet any of the requirements of paragraph (b)(7)(iii) of this section, the component is not qualified refinery property. However, if the manufacture, construction, or production of a component fails to meet any of the requirements provided in paragraph (b)(7)(iii) of this section, but the construction of the self-constructed property begins after June 14, 2005, the self constructed property may qualify as qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section). If the construction of the self-constructed property begins before June 14, 2005, neither the self-constructed property nor any components related to the self-constructed property are qualified refinery property. If the component was self-constructed before January 1, 2010, but the construction of the self-constructed property begins after December 31, 2009, the component may qualify as qualified refinery property, although the self-constructed property is not qualified refinery property.

(c) *Computation of expense deduction for qualified refinery property.* In general, the allowable deduction under paragraph (d) of this section for qualified refinery property is determined by multiplying by 50 percent the cost of the qualified refinery property paid or incurred by the taxpayer.

(d) *Election*—(1) *In general.* A taxpayer may make an election to deduct as an expense 50 percent of the cost of any qualified refinery property. A taxpayer making this election takes the 50 percent deduction for the taxable year in which the qualified refinery property is placed in service.

(2) *Time and manner for making election*—(i) *Time for making election.* An election specified in this paragraph

(d) generally must be made not later than the due date (including extensions) for filing the original Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer.

(ii) *Manner of making election.* The taxpayer makes an election under section 179C(a) and this paragraph (d) by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service, and attaching a report as specified in paragraph (f) of this section to the taxpayer's timely filed original federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(3) *Revocation of election*—(i) *In general.* An election made under section 179C(a) and this paragraph (d), and any specification contained in such election, may not be revoked except with the consent of the Commissioner of Internal Revenue.

(ii) *Revocation prior to the revocation deadline.* A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 179C(a) and this paragraph (d) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is 24 months after the due date (including extensions) for filing the taxpayer's Federal income return for the taxable year for which the election applies. An election under section 179C(a) and this paragraph (d) is revoked by attaching a statement to an amended return for the taxable year for which the election applies. The statement must specify the name and address of the refinery for which the election applies and the amount deducted on the taxpayer's original Federal income tax return for the taxable year for which the election applies.

(iii) *Revocation after the revocation deadline.* An election under section 179C(a) and this paragraph (d) may not be revoked after the revocation deadline. The revocation deadline may not be extended under § 301.9100–1.

(iv) *Revocation by cooperative taxpayer.* A taxpayer that has made an election to allocate the section 179C deduction to cooperative owners under section 179C(g) and paragraph (e) of this section may not revoke its election under section 179C(a).

(e) *Election to allocate section 179C deduction to cooperative owners*—(1) *In general.* If a cooperative taxpayer makes an election under section 179C(g) and this paragraph (e), the cooperative taxpayer may elect to allocate all, some, or none of the deduction allowable under section 179C(a) for that taxable year to the cooperative owner(s). This allocation is equal to the cooperative owner(s)' ratable share of the total amount allocated, determined on the basis of each cooperative owner's ownership interest in the cooperative taxpayer. For purposes of this section, a cooperative taxpayer is an organization to which part I of subchapter T applies, and in which another organization to which part I of subchapter T applies (cooperative owner) directly holds an ownership interest. No deduction shall be allowed under section 1382 for any amount allocated under this paragraph (e).

(2) *Time and manner for making election*—(i) *Time for making election.* A cooperative taxpayer must make the election under section 179C(g) and this paragraph (e) by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(ii) *Manner of making election.* An election under this paragraph (e) is made by attaching to the cooperative taxpayer's timely filed Federal income tax return for the taxable year (including extensions) to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies a statement providing the following information:

(A) The name and taxpayer identification number of the cooperative taxpayer.

(B) The amount of the deduction allowable to the cooperative taxpayer for the taxable year to which the election under section 179C(a) and paragraph (d) of this section applies.

(C) The name and taxpayer identification number of each cooperative owner to which the cooperative taxpayer is allocating all or some of the deduction allowable.

(D) The amount of the allowable deduction that is allocated to each cooperative owner listed in paragraph (e)(2)(ii)(C) of this section.

(3) *Written notice to owners.* If any portion of the deduction allowable under section 179C(a) is allocated to a cooperative owner, the cooperative taxpayer must notify the cooperative owner of the amount of the deduction allocated to the cooperative owner in a written notice, and on Form 1099–PATR, "Taxable Distributions Received from Cooperatives." This notice must be provided on or before the due date (including extensions) of the cooperative taxpayer's original federal income tax return for the taxable year for which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(4) *Irrevocable election.* A section 179C(g) election, once made, is irrevocable.

(f) *Reporting requirement*—(1) *In general.* A taxpayer may not claim a deduction under section 179C(a) for any taxable year unless the taxpayer files a report with the Secretary containing information with respect to the operation of the taxpayer's refineries.

(2) *Information to be included in the report.* The taxpayer must specify—

(i) The name and address of the refinery;

(ii) Under which production capacity requirement under section 179C(e) and paragraph (b)(5)(i)(A), (B), and (C) of this section the taxpayer's qualified refinery qualifies;

(iii) Whether the refinery is qualified refinery property under section 179C(d) and paragraph (b)(2) of this section, sufficient to establish that the primary purpose of the refinery is to process liquid fuel from crude oil, qualified fuels, or directly from shale or tar sands.

(iv) The total cost basis of the qualified refinery property at issue for the taxpayer's current taxable year; and

(v) The depreciation treatment of the capitalized portion of the qualified refinery property.

(3) *Time and manner for submitting report*—(i) *Time for submitting report.* The taxpayer is required to submit the report specified in this paragraph (f) not later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(ii) *Manner of submitting report.* The taxpayer must attach the report specified in this paragraph (f) to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(g) *Effective/applicability date.* This section is applicable for taxable years ending on or after August 22, 2011. For taxable years ending before August 22, 2011, taxpayers may apply the proposed regulations published on July 9, 2008, or, in the alternative, may apply these final regulations.

§ 1.179C–1T [Removed]

■ **Par. 3.** Section 1.179C–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.179C–1	1545–2103
* * * * *	

Approved: August 9, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Emily S. McMahon,

(Acting) Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–21408 Filed 8–22–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9543]

RIN 1545–BA99

Timely Mailing Treated as Timely Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations amending a Treasury Regulation to provide guidance as to the only ways to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws, absent direct proof of actual delivery. The regulations provide that the proper use of registered or certified mail, or a service of a private delivery service (PDS) designated under criteria established by the IRS, will constitute prima facie evidence of delivery. The regulations are necessary to provide greater certainty on this issue and to provide specific guidance. The regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court.

DATES: *Effective Date:* These regulations are effective on August 23, 2011.

Applicability Date: These regulations apply to any payment or document mailed and delivered in accordance with the requirements of this section in an envelope bearing a postmark dated after September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Karon, (202) 622- 4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1899. The collection of information in these final regulations is in § 301.7502–1. This information is required in order for taxpayers to be able to establish the postmark date and prima facie evidence of delivery when using certified or registered mail.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains regulations amending 26 CFR part 301 under section 7502 of the Internal Revenue Code (Code). Section 7502(a) first appeared as part of the recodification of the Code in 1954. Section 7502(a) is commonly known as the timely mailing/timely filing rule. Section 301.7502–1 of the Procedure and Administration Regulations provides rules for taxpayers to follow to qualify for favorable treatment under section 7502. There is a conflict among the Federal circuit courts of appeal as to whether the provisions in section 7502 provide the exclusive means to establish prima facie evidence of delivery of a document to the IRS or the United States Tax Court. Specifically, courts have reached differing conclusions regarding whether a taxpayer may raise a presumption of delivery of Federal tax documents to the IRS and the United States Tax Court only in situations in which the taxpayer uses registered or certified mail.

A notice of proposed rulemaking (REG–138176–02) was published in the **Federal Register** (69 FR 56377) on September 21, 2004. The proposed regulations clarified that, other than direct proof of actual delivery, the exclusive means to establish prima facie evidence of delivery of Federal tax documents to the IRS and the United States Tax Court is to prove the use of registered or certified mail. Under section 7502(f)(3), the IRS may extend to a service provided by a PDS a rule similar to the prima facie evidence of delivery rule applicable to certified and registered mail. Prior to the publication of the notice of proposed rulemaking, the IRS had not received any comments or suggestions for extending this rule, even though the IRS and the Treasury Department previously requested comments in a prior notice of proposed rulemaking under section 7502. See **Federal Register**, 64 FR 2606 (January 15, 1999). Because the IRS was clarifying what documentation it will accept as proof of delivery, additional comments were sought on this issue. Accordingly, in the notice of proposed rulemaking, the IRS and the Treasury Department encouraged the public to make comments regarding whether the prima facie evidence of delivery rule should be extended to a service provided by a PDS.

Eighteen written comments were received in response to the notice of proposed rulemaking. Three commenters requested a public hearing. A notice of public hearing on proposed rulemaking was published in the **Federal Register** (69 FR 68282) on November 24, 2004. A public hearing was held on January 11, 2005. Three commenters appeared at the public hearing and commented on the notice of proposed rulemaking.

All comments were considered and are available for public inspection upon request. After consideration of the written comments and the comments provided at the public hearing, the proposed regulations under section 7502 are adopted as revised by this Treasury Decision. The public comments, public hearing, and the revisions are discussed in this preamble.

Summary of Comments and Explanation of Provisions

Four commenters expressed concern that the proposed regulations limited the proof to satisfy the timely mailing/timely filing rule of section 7502(a) rather than the prima facie evidence of delivery rule of section 7502(c). These final regulations do not limit the use of

U.S. Mail, other delivery options offered by the United States Postal Service (USPS), or a PDS for purposes of satisfying the timely mailing/timely filing rule of section 7502(a). Instead, these final regulations clarify the prima facie evidence of delivery rule of section 7502(c).

Seven commenters suggested that the proposed regulations provide that evidence of proper use of a service offered by a PDS should establish prima facie evidence of delivery of Federal tax documents to the IRS and the United States Tax Court. Seven commenters observed that PDSs offered services similar to certified and registered mail, and that the services offered by the PDSs were as reliable as registered mail and certified mail. Two commenters noted that PDSs generally provide a greater level of detail with respect to tracking and delivery information than certified and registered mail for purposes of establishing proof of delivery. Three commenters expressed concern that it is inconsistent to permit individuals to rely upon PDSs to satisfy the timely mailing/timely filing rule of section 7502(a), but not for section 7502(c). One commentator observed that section 7502(f)(3) requires that the Treasury Secretary and the IRS consider PDS alternatives as substitutes for certified and registered mail.

After considering comments received on the proposed regulations, these final regulations provide that the Treasury Department and IRS will issue guidance that will establish the criteria to be used to designate PDSs for purposes of the prima facie evidence of delivery rule. Cf. Notice 2004–83 (2004–2 CB 1030) (listing PDSs that the Secretary has designated pursuant to section 7502(f)(2)) (see § 601.601(d)(2)(ii)(*b*) of this chapter); Rev. Proc. 97–19 (1997–1 CB 644) (providing the criteria to determine whether a PDS qualifies as a designated private delivery service under section 7502(f) and the procedures under which a PDS can apply to become a designated PDS) (see § 601.601(d)(2)(ii)(*b*) of this chapter). Thus, these final regulations provide that, other than direct proof of actual delivery, proof of proper use of registered or certified mail (registered or certified mail sender's receipt), and proof of proper use of a PDS duly designated under criteria established by the IRS, are the sole means to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws.

The existing regulations under section 7502 are being reorganized. Section 301.7502–1(e) will still be entitled "Delivery," but will now focus on the requirement for actual delivery or the use of one of the means discussed above to establish a presumption of delivery. Former paragraph (e)(2) and the example in paragraph (e)(3) are moved to paragraph (b)(2) to consolidate the discussion of the effect of section 7502 on certain claims for refund.

Seven commenters suggested that the proposed regulations should permit additional services offered by the USPS to establish prima facie evidence of delivery of Federal tax documents to the IRS and the United States Tax Court. Commenters recommended that the following USPS services should be permitted to establish prima facie evidence of delivery: Priority Mail, Certificate of Mailing, Express Mail Receipt, Delivery Confirmation Receipt, and Signature Confirmation.

Section 7502 does not authorize the Treasury Department or the IRS to adopt a rule that would permit USPS services in addition to certified and registered mail to establish prima facie evidence of delivery. Congress has been clear when it intended to change section 7502 to allow proof of delivery by other means. In 1958, Congress amended section 7502 to provide the IRS with the authority to treat certified mail the same as registered mail. See Technical Amendments Act of 1958, Public Law No. 85–866 (72 Stat. 1606 (1958)). Congress also amended section 7502 to authorize the IRS to publish rules providing the extent to which a PDS is the equivalent of certified mail. See Taxpayer Bill of Rights 2, Public Law 104–168 (110 Stat. 1452 (1996)); Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685 (1998)). Similar legislation would be necessary to authorize the IRS to treat additional USPS services as prima facie evidence of delivery.

Two commenters expressed concern that certified and registered mail services are expensive and inconvenient in comparison to first class mail. These commenters suggested that regular first class mail should suffice to establish prima facie evidence of delivery. As described above, the prima facie evidence of delivery rule provides an exception to the actual delivery rule. Absent actual delivery, however, first class mail without additional services provides nothing, such as certified or registered mail receipt, to establish proof of delivery. Moreover, without legislative action, the Treasury Department and the IRS cannot adopt regulations extending the prima facie evidence of delivery rule to first class mail.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Although the collection of information in this Treasury decision affects a substantial number of small entities, the economic impact on these small entities is not substantial. If a small entity uses registered or certified mail to file a document with the IRS, the additional burden (filling out the appropriate United States Postal Service forms) over and above using regular mail is not substantial. Furthermore, the extra cost to use registered or certified mail is not substantial as certified mail costs only $2.80 and registered mail can be used for as little as $10.60. Finally, the added burden of retaining the certified or registered mail sender's receipt will be minimal as the receipt can be associated with the small entity's copy of the document that it filed with the IRS.

Pursuant to section 7805(f) of the Code, the proposed rule that preceded this Treasury decision was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Steven L. Karon of the Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by removing the

entry for § 301.7502–1T to read in part as follows:

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

■ **Par. 2.** Section 301.7502–1 is amended by:
■ 1. Revising paragraphs (b)(2) and (e).
■ 2. Adding paragraphs (c)(3) and (g)(4).

The additions and revisions read as follows:

§ 301.7502–1 Timely mailing of documents and payments treated as timely filing and paying.

* * * * *

(b) * * *

(2) *Claims for refund*—(i) *In general.* In the case of certain taxes, a return may constitute a claim for credit or refund. Section 7502 is applicable to the determination of whether a claim for credit or refund is timely filed for purposes of section 6511(a) if the conditions of section 7502 are met, irrespective of whether the claim is also a return. For rules regarding claims for refund on late filed tax returns, see paragraph (f) of this section. Section 7502 is also applicable when a claim for credit or refund is delivered after the last day of the period specified in section 6511(b)(2)(A) or in any other corresponding provision of law relating to the limit on the amount of credit or refund that is allowable.

(ii) *Example.* The rules of paragraph (b)(2)(i) of this section are illustrated by the following example:

Example. (A) Taxpayer A, an individual, mailed his 2004 Form 1040, "U.S. Individual Income Tax Return," on May 10, 2005, but no tax was paid at that time because the tax liability disclosed by the return had been completely satisfied by the income tax that had been withheld on A's wages. On April 15, 2008, A mails, in accordance with the requirements of this section, a Form 1040X, "Amended U.S. Individual Income Tax Return," claiming a refund of a portion of the tax that had been paid through withholding during 2004. The date of the postmark on the envelope containing the claim for refund is April 15, 2008. The claim is received by the IRS on April 18, 2008.

(B) Under section 6511(a), A's claim for refund is timely if filed within three years from May 10, 2005, the date on which A's 2004 return was filed. As a result of the limitations of section 6511(b)(2)(A), if A's claim is not filed within three years after April 15, 2005, the date on which A is deemed under section 6513 to have paid his 2004 tax, A is not entitled to any refund. Because A's claim for refund is postmarked and mailed in accordance with the requirements of this section and is delivered after the last day of the period specified in section 6511(b)(2)(A), section 7502 is applicable and the claim is deemed to have been filed on April 15, 2008.

* * * * *

(c) * * *

(3) *Private delivery services.* Under section 7502(f)(1), a service of a private delivery service (PDS) may be treated as an equivalent to United States mail for purposes of the postmark rule if the Commissioner determines that the service satisfies the conditions of section 7502(f)(2). Thus, the Commissioner may, in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), prescribe procedures and additional rules to designate a service of a PDS for purposes of the postmark rule of section 7502(a).

* * * * *

(e) *Delivery*—(1) *General rule.* Except as provided in section 7502(f) and paragraphs (c)(3) and (d) of this section, section 7502 is not applicable unless the document or payment is delivered by U.S. mail to the agency, officer, or office with which the document is required to be filed or to which payment is required to be made.

(2) *Exceptions to actual delivery*—(i) *Registered and certified mail.* In the case of a document (but not a payment) sent by registered or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued and that the envelope was properly addressed to the agency, officer, or office constitutes prima facie evidence that the document was delivered to the agency, officer, or office. Other than direct proof of actual delivery, proof of proper use of registered or certified mail, and proof of proper use of a duly designated PDS as provided for by paragraph (e)(2)(ii) of this section, are the exclusive means to establish prima facie evidence of delivery of a document to the agency, officer, or office with which the document is required to be filed. No other evidence of a postmark or of mailing will be prima facie evidence of delivery or raise a presumption that the document was delivered.

(ii) *Equivalents of registered and certified mail.* Under section 7502(f)(3), the Secretary may extend the prima facie evidence of delivery rule of section 7502(c)(1)(A) to a service of a designated PDS, which is substantially equivalent to United States registered or certified mail. Thus, the Commissioner may, in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), prescribe procedures and additional rules to designate a service of a PDS for purposes of demonstrating prima facie evidence of delivery of a document pursuant to section 7502(c).

* * * * *

(g) * * *

(4) *Registered or certified mail as the means to prove delivery of a document.* Section 301.7502–1(e)(2) will apply to all documents mailed after September 21, 2004.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 10, 2011.

Emily S. McMahon,

Acting Assistant Secretary (Tax Policy).

[FR Doc. 2011–21416 Filed 8–22–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0194]

RIN 1625–AA08

Special Local Regulations; Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary Special Local Regulation on the Sabine River within the Port Arthur, TX Captain of the Port Zone. This Special Local Regulation is intended to restrict vessels from portions of the Sabine River during the annual S.P.O.R.T boat races. This Special Local Regulations is necessary to protect spectators and vessels from the hazards associated with powerboat races.

DATES: This rule is effective from 8 a.m. on September 24, 2011 to 6 p.m. on September 25, 2011. This rule will be enforced from 8 a.m. until 6 p.m. on September 24 and 25, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0194 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0194 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 temporary

rule, call or e-mail Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, Coast Guard; telephone 409–719–5086, e-mail *scott.k.whalen@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 27, 2011, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Sabine River, Orange, TX in the **Federal Register** (76 FR 103). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This temporary special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with a powerboat race. Under the authority of 33 U.S.C. 1233, the Captain of the Port has determined that powerboat races in close proximity to watercraft and infrastructure pose significant risk to public safety and property. Establishing a special local regulation around the location of the race course will help ensure the safety of persons and property at these events and help minimize the risks associated with high speed powerboat races.

Discussion of Comments and Changes

We received no comments and no changes have been made to the proposed 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.

Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: (1) The rule will be enforced for ten hours each day for two days; (2) scheduled breaks will be provided to allow waiting vessels to transit safely through the affected area; and (3) persons and vessels may enter, transit through, anchor in, or remain within the regulated area if they obtain permission from the COTP or the designated representative; and (4) advance notification will be made to the maritime community via broadcast notice to mariners and Local Notice to Mariners (LNM).

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 would not have a significant economic impact on a substantial number of small entities.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 8 a.m. until 6 p.m. each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port, Port Arthur or a designated representative; and (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

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.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 would 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves the establishment of a Special Local Regulation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100 —REGULATED—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T08–0194 to read as follows:

§ 100.35T08–0194 Special Local Regulations for Marine Events; Sabine River, Orange, TX.

(a) *Definitions.* As used in this section "*Participant Vessel*" means all vessels officially registered with event officials to race or work in the event. These vessels include race boats, rescue boats, tow boats, and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: All waters of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N 93°43′24″ W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N.

(c) *Enforcement Period.* This regulation will be enforced daily from 8 a.m. until 6 p.m. on September 24 and 25, 2011.

(d) *Regulations.*

(1) In accordance with the general regulations in § 100 of this part, entry into this zone is prohibited to all vessels except participant vessels and those vessels specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (409) 723–6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur, designated representatives and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 29, 2011.

Z.H. Pickett,

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

[FR Doc. 2011–21461 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2011–0761]

RIN 1625–AA09

Drawbridge Operation Regulation; Illinois Waterway, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Elgin Joliet and Eastern Railroad Drawbridge, across the Illinois Waterway, mile 290.1, at Joliet, Illinois. The deviation is necessary to allow the replacement of the existing bridge miter rail joints and installation of lift span alignment guides to ensure precise seating. This deviation allows the bridge to be maintained in the closed-to-navigation position for ten hours.

DATES: This deviation is effective from 8 a.m. to 6 p.m. on August 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0761 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0761 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FUTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, e-mail *Eric.Washburn*@uscg.mil. If you have questions on viewing the docket,

call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Canadian National Railway requested a temporary deviation for the Elgin Joliet and Eastern Railroad Drawbridge, across the Illinois Waterway, mile 290.1, at Joliet, Illinois to remain in the closed-to-navigation position for ten hours while repair work is done on the drawbridge. The Elgin Joliet and Eastern Railroad Drawbridge currently operates in accordance with 33 CFR 117.393(d), which states that the drawspan is normally maintained in the fully open to navigation position and the drawbridge is operated by remote operator located at the Elgin, Joliet & Eastern offices in East Joliet, Illinois.

There are no alternate routes for vessels transiting this section of the Illinois Waterway.

The Elgin Joliet and Eastern Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 24.6 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: August 2, 2011.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2011–21456 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0591]

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CSX Railroad Vertical Lift Bridge across the Anacostia River, mile 3.4, at Washington, DC. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is necessary. This deviation will change the current eight hour advance notice requirement for a bridge opening to a 48 hour advance notice requirement for a bridge opening.

DATES: This deviation is effective from August 23, 2011 through February 21, 2012.

Comments and related material must be received by the Coast Guard on December 21, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0591 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0591), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0591," click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0591" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy

Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The CSX Railroad Company has requested a change in the operation regulations for the CSX Railroad Vertical Lift Bridge, across the Anacostia River, mile 3.4, at Washington, DC. The change will replace the current eight hour advance notice requirement for a bridge opening to a 48 hour advance notice requirement for a bridge opening. The bridge is part of a rail line that is used for regular passenger service therefore, it is necessary that ample time is given to maintain an accurate schedule for trains and vessels for safe and efficient travel across and through the bridge.

The current operating schedule for the bridge is set out in 33 CFR 117.253(b). The regulation was established in August 2004 and allows the bridge to be operated from a remote location, the Benning Yard office. The draw of the bridge shall open on signal at all times for public vessels of the United States, state and local government vessels, commercial vessels and any vessels in an emergency involving danger to life or property. The draw shall open on signal between 9 a.m. and 12 p.m., and between 1 p.m. and 6 p.m. from May 15 through September 30; and between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the controller no later than 6 p.m. on the day for which the opening is requested. At all other times the bridge will open if at least 8 hours notice is given.

The vertical clearance of the bridge is 5 feet at Mean High Water in the closed position and 29 feet at Mean High Water in the open position. We are testing the potential operating regulation adjustment to discover any impacts to train traffic and water navigation as a result of the bridge opening request time adjustment. During the test deviation period a bridge opening count has been requested from the CSX Railroad Company. There are 21 train transits across this bridge every day. A review of the bridge operating logs shows two bridge openings have been requested in the past two years for vessels taller than five feet. The test period will go into effect immediately and will end 180 days from the effective date. The test deviation will be in effect simultaneously with a notice of proposed rulemaking which is also part of docket no. USCG–2011–0591, for the same operating regulation change.

Vessels that are able to pass under the bridge in the closed position may do so at any time. There are no alternate routes for vessels that cannot pass under the bridge in the closed position. The Coast Guard will inform waterway users through the Local and Broadcast Notices to Mariners. The bridge will be able to open for emergencies.

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

Dated: July 22, 2011.

William D. Lee,

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

[FR Doc. 2011–21458 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0863]

RIN 1625–AA09

Drawbridge Operation Regulation; Bonfouca Bayou, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the State Route (SR) 433 Swing Span Bridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana. The Louisiana Department of Transportation and Development (LDOTD) requested that the operating regulation of the SR 433 swing span bridge be changed in order to allow for signaled openings to begin later in the mornings and later in the evenings during the months of daylight savings time.

DATES: This rule is effective September 22, 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–2009–0863 and are available by going to *http://www.regulations.gov*, inserting USCG–2009–0863 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 David Frank, Bridge Administrator, Coast Guard; telephone 504–671–2128, e-mail *David.M.Frank@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 December 22, 2009, we published an interim rule with request for comments in the **Federal Register** (74 FR 67974). No comments were received. No public hearing was requested and none was held.

Basis and Purpose

The LDOTD requested that the operating regulation of the SR 433 Swing Span Bridge across Bonfouca Bayou, mile 7.0 at Slidell, Louisiana be changed in order to allow for signaled openings to begin later in the mornings and later in the evenings during the months of daylight savings time from March 1 through October 30 each year. LDOTD indicated that extending the morning requirement for a two-hour notice by one hour will not affect mariners passing through the bridge because few mariners do so in the morning.

Bridge tender logs indicate that most recreational vessels transit the bridge during spring, summer and fall months than during the winter months of November through February. The logs also show that most of the recreational boaters do not signal for an opening prior to 7 a.m.

In the interim rule we extended the time for the bridge to open on signal to 9 p.m., during the months of daylight savings time, thereby affording mariners the opportunity to extend their activities for the full period of daylight each day. We also delayed the beginning of the on signal openings to 7 a.m. so that the evening extension did not unduly burden the bridge owner by significantly increasing the length of time it is necessary to continuously man the bridge.

Prior to publishing the interim rule, 33 CFR 117.433 stated: The draw of the S433 Bridge, mile 7.0, at Slidell, shall open on signal, except that from 6 p.m. to 6 a.m. the draw shall open on signal if at least two hours notice is given. On Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m.

This final rule replaces the interim rule and allows the bridge to open on signal, except that from March 1 through October 30, the regular boating season, the draw shall open on signal if at least two hours notice is given from 9 p.m. to 7 a.m. During the winter months of November 1 through February 28 or 29, the bridge will revert to the two-hour notice requirement from 6 p.m. to 6 a.m. To continue to accommodate rush hour vehicular traffic the bridge will continue to remain closed to navigation, Monday through Friday, except Federal holidays, from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m.

Discussion of Comments and Changes

The Coast Guard received no comments or requests for changes to the interim rule and the Coast Guard made no changes to the interim 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.

Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The interim rule has been in effect since December 22, 2009 and no complaints or comments have been received by the Coast Guard from any waterway users.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include (1) Small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels patronizing the marina just upstream of the bridge and owners or operators of small commercial fishing vessels. This rule extends by one hour the total duration of the on-demand bridge openings and changes the time of day for on-demand bridge openings from 6 a.m.–6 p.m. to 7 a.m.–9 p.m. Bridge logs indicate the morning delay will have minimal impact on bridge openings therefore this rule will not affect a substantial number of small entities and therefore will not have a substantial economic impact.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the interim rule 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, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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. Revise § 117.433 to read as follows:

§ 117.433 Bonfouca Bayou.

The draw of the S433 Bridge, mile 7.0, at Slidell, shall open on signal, except that from 6 p.m. to 6 a.m. from November 1 through February 28 or February 29, the draw shall open on signal if at least two hours, notice is given. From March 1 through October 30, from 9 p.m. to 7 a.m. the draw shall open on signal if at least two hours, notice is given. On Monday through Friday, except Federal holidays, throughout the year, the draw need not open for the passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m.

Dated: July 27, 2011.

Roy A. Nash,

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

[FR Doc. 2011–21459 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0727]

RIN 1625–AA11

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill in New York and New Jersey. This temporary interim rule is necessary to enhance navigation, vessel safety, marine environmental protection, and provide for the safety of life on the navigable waters during drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project. We seek comments regarding this rule and will consider those comments before issuing a final rule.

DATES: This rule is effective in the CFR on August 23, 2011 until 5 p.m. on April 1, 2014. This rule is effective with actual notice for purposes of enforcement from 8 a.m. on August 12, 2011 until 5 p.m. on April 1, 2014. Comments and related material must reach the Coast Guard on or before September 22, 2011 but will be accepted and reviewed by the Coast Guard through April 1, 2014, that is, for as long as the RNA is in place.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0727 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Mr. Jeff Yunker, U.S. Coast Guard Sector New York Waterways Management Division, Coast Guard; telephone 718–354–4195, e-mail *Jeff.M.Yunker@uscg.mil*, or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, e-mail *Isaac.M.Slavitt@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

As this interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments. Alternatively, if the dredging project necessitating the interim rule is completed before April 1, 2014, and we receive no public comments that indicate a substantive need to revise the rule, we may allow it to expire on that date without further regulatory action.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0727), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery or mail your comment, it will be considered as having been received by the Coast Guard when it is received at

the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0727" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will consider those comments before issuing a final rule.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0727" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 553. But you may submit a request for one using one of the four methods specified under **ADDRESSES.** Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. The Coast Guard has held or participated in fourteen locally announced informal waterway user meetings where waterway closures and restrictions were discussed. We anticipate holding additional informal meetings, with opportunity for public questions or comments, during this project. We will provide written summaries of any such meetings in the docket.

Regulatory Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the APA, 5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of the public in the vicinity of the drilling, dredging and blasting operations being conducted in the Arthur Kill. In November 2010, Northeast Dredging Company, the contractor, advised that the Arthur Kill Channel Deepening Project would require rolling two-week closures of the middle third of the Arthur Kill to conduct the drilling and blasting operations. The requested closure of the Arthur Kill would have shut down the Arthur Kill to all deep draft vessels in the area resulting in a long term disruption to cargo and oil terminal facilities operations. We advised the U.S. Army Corps of Engineers (USACE) and the contractor that the complete closure of the Arthur Kill for two-week periods during the course of the deepening project would negatively impact navigational safety on the waterway and that an alternative proposal that would keep the channel open to vessel traffic was necessary.

We participated in nine initial planning meetings with the USACE, harbor and docking pilots, tugboat operators, facility operators, and the contractors between January and April 2011. In early April 2011 the USACE, with the assistance of harbor and docking pilots, conducted simulator assessments of the drilling and blasting areas. These simulations studied the possibility of reducing the size of the drilling and blasting areas in order to maintain one-half of the channel open at all times for vessel transits. The results of the simulation allowed the USACE to determine that, although it was possible to conduct the channel deepening without completely closing the Arthur Kill, additional coordination meetings were necessary.

Five additional meetings were held between April and June 2011 to discuss the results of the navigation simulations. In June the USACE and the contractor presented a revised drilling, blasting and dredging plan, which called for reduction in the channel width during the deepening project. The drilling, blasting and dredging operations will render a portion of the Arthur Kill unavailable to vessel navigation and decrease the overall width of the navigable channel that is available to deep draft commercial vessels. The Coast Guard initially planned to control traffic under the auspices of the Vessel Traffic Service (VTS) New York, but as a result of the June 2011 meeting with the USACE, it was determined that a Regulated Navigation Area (RNA) would be necessary. The dynamic nature of the dredging process and multitude of drilling and blasting equipment associated with the project necessitates that all mariners comply with this RNA, as the drilling and blasting equipment configuration may change on a daily basis. Immediate action is needed to control vessels operating in the reduced waterway and protect the maritime public from the hazards associated with drilling, blasting and dredging operations on a constricted waterway. Publishing a NPRM and waiting 30 days for comment would be contrary to the public interest since immediate action is needed to restrict vessel traffic and protect the maritime public from the hazards associated with drilling, blasting and dredging operations.

For the same reasons, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the ongoing channel deepening project.

Discussion of Rule

The RNA encompasses all waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill.

Drilling and blasting operations began in the Arthur Kill on Tuesday, August 2, 2011. The project consists of dredging, drilling and underwater blasting of bedrock in the Arthur Kill navigable channel. Dredging operations will encroach on portions of the navigable channel, require the relocation of lateral aids to navigation, and create a reduction in the width of the navigable channel.

This interim rule seeks to enhance navigational safety and marine environmental protection, and promote vessel movement by reducing the potential for collisions, groundings, and the loss of lives and property. This interim rule became effective with actual notice upon being signed by the District Commander; however the Coast Guard would like to receive comments before issuing a final rule.

Any violation of the RNA described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant-mariner credentials.

The Captain of the Port (COTP) New York will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means to effect the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

Regulatory Analyses

We developed this interim 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.

The economic impact of this rule will be severely limited for the following reasons: (1) The RNA does not prohibit vessels from transiting the area; (2) vessels will be allowed to safely transit without restrictions in areas where there are no dredges or drill barges operating; (3) vessels may be allowed to transit work areas where dredges and/or drill barges are operating unless blasting operations are underway; (4) delays resulting from blast operations are expected to last no longer than 15 minutes and occur twice daily; and (5) advance notification will be made to the maritime community via Local Notice to Mariners, Broadcast Notice to Mariners, and on the Internet at *http://homeport.uscg.mil/newyork*.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in a portion of the Arthur Kill from August 12. 2011 until the Arthur Kill Channel Deepening Project is completed.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: although the regulated navigation area will apply to the entire width of the Arthur Kill, vessel traffic will be allowed to pass through the regulated area by coordinating with Vessel Traffic Service New York (VTSNY). Before the effective period, we will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0727 to read as follows:

§ 165.T01–0727 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) *Regulated Area.* The following area is a regulated navigation area: all waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill; bounded in the northeast by a line drawn from position 40° 38′48.637″ N, 074° 09′18.204″ W; to a point in position 40°38′37.815″ N, 074° 09′20.245″ W; and bounded in the southwest by a line drawn from position 40° 37′15.643″ N, 074° 12′15.927″ W; to a point in position 40° 37′15.779″ N, 074° 12′08.0622″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels must remain at least 150 feet from all drilling and blasting equipment; if a vessel must pass within 150 feet of drilling and blasting equipment for reasons of safety, they shall contact the dredge and/or blasting barge on Channel 13.

(3) No vessel shall enter or transit any work area where drill barges and/or dredges are located without the permission of Vessel Traffic Service New York (VTSNY) Director.

(4) No vessel may be underway within 1,500 feet of the blasting area during blasting operations.

(5) No vessel shall enter an area of drilling or blasting when they are advised by the drilling barge or VTSNY that a misfire or hang fire has occurred.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(7) Each vessel transiting in the vicinity of a work area where dredges are located is required to do so at reduced speed to maintain maneuverability while minimizing the effects of wake and surge.

(8) The VTSNY Director may impose additional requirements through VTS measures, as per 33 CFR 161.11.

(c) *Effective Period.* This rule is effective from 8 a.m. on August 12, 2011 until 5 p.m. on April 1, 2014.

Dated: 12 Aug 2011.

J.B. McPherson,

Captain, U.S. Coast Guard, Commander, First Coast Guard District, Acting.

[FR Doc. 2011–21460 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AO06

Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its hearing regulations to clarify that the provisions regarding hearings before the Agency of Original Jurisdiction (AOJ) do not apply to hearings before the Board of Veterans' Appeals (Board).

DATES: *Effective Date:* This rule is effective August 23, 2011.

FOR FURTHER INFORMATION CONTACT: Laura H. Eskenazi, Principal Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–8078. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document amends 38 CFR parts 3 and 20 to clarify existing hearing practices and procedures before the AOJ and the Board. Specifically, VA is amending § 3.103(a) and (c) to clarify that the hearing procedures outlined in § 3.103 apply to hearings held before the AOJ and not to hearings held before the Board. VA is also amending § 20.706 to further clarify that Board Members presiding over a hearing on appeal are not bound by the hearing procedures in § 3.103(c) and must conduct hearings in accordance with part 20, subpart H, which contains provisions governing Board hearing practice and procedure. In Appendix A to part 20, VA is removing the cross references to § 3.103.

VA has determined these clarifying changes are necessary because of a recent decision by the United States Court of Appeals for Veterans Claims (Court) in *Bryant* v. *Shinseki,* 23 Vet. App. 488 (2010), that applied the provisions of § 3.103(c)(2) to a Board hearing. The *Bryant* Court held that the provisions of § 3.103(c)(2) require a "Board hearing officer" to "fully explain the issues still outstanding that are relevant and material to substantiating the claim" and to "suggest that a claimant submit evidence on an issue material to substantiating the claim when the record is missing any evidence on that issue or when the testimony at the hearing raises an issue for which there is no evidence in the record." *Id.* at 496–97. The Court concluded with respect to one of the service connection claims on appeal that the Veteran had been prejudiced because the presiding "Board hearing officer" had not explained matters material to the outcome of the claim and had not suggested that the Veteran could secure evidence regarding a nexus between his current disability and service. *Id.* at 499. The Court found prejudice existed because evidence of a nexus was not of record at the time of the hearing and remained lacking at the time of the decision. *Id.*

In reaching its conclusions, the Court relied in part on its previous holding in *Douglas* v. *Derwinski,* 2 Vet. App. 435 (1992), which held that the provisions of § 3.103(c) applied to hearings before the Board. *Bryant,* 23 Vet. App. at 494 (citing *Douglas,* 2 Vet. App. at 442). At the time the Court decided *Douglas,* the Board's Rules of Practice provided that hearings on appeal could be held: "(a) [b]efore a section of the Board of Veterans' Appeals in Washington, DC[;] (b) * * * before a traveling section of the Board of Veterans' Appeals during regularly scheduled visits to [VA] facilities[;] [or] (c) [b]efore appropriate personnel in the [VA] regional or other office nearest the appellant's residence, acting as a hearing agency for the Board of Veterans' Appeals." 38 CFR 19.160 (1991). Under the former rules, if an appellant chose to have a hearing before employees of the AOJ acting as a hearing agency for the Board, then he or she was not entitled to a subsequent hearing before a Board Member. *See id.; see also* Veterans Benefits Administration, M21–1 Adjudication Procedures Manual, § 18.17g (1991) ("A formal hearing on appeal at a regional office will be in lieu of such a hearing before the [Board], except in the unusual case in which a special appearance by the claimant before the [Board], or the special attention of an accredited organization's headquarters in Washington, DC, is requested by the appellant.").

Not long after the Court decided *Douglas,* the Board amended its hearing regulations to terminate the practice of AOJ personnel holding appellate hearings on the Board's behalf. The final rulemaking noted that the Board was implementing these changes because it had decided "a clear demarcation should exist between the conduct of hearings by the Board and hearings conducted by [Veterans Benefits Administration] employees at regional offices." 58 FR 27934, 27934 (May 12, 1993). As a result of this procedural modification, an appellant now has the opportunity to appear for a hearing with the AOJ at any time prior to when his or her appeal is certified to the Board. 38 CFR 3.103(a); *Your Rights to Appeal Our Decision,* VA Form 4107 (Sept. 2009). The appellant also has a right to appear at a separate hearing on appeal before a Board Member. 38 CFR 20.700(a); *see* VA Form 4107 (stating that a hearing before the AOJ is separate from any hearing an appellant may later request before the Board); *see also Gambill* v. *Shinseki,* 576 F.3d 1307, 1315, 1316 (Fed. Cir. 2009) (Bryson, J., concurring) (explaining that an appellant has a right to appear at hearings before the AOJ and the Board).

The 1993 regulatory changes reflected VA's intent to clearly distinguish hearings before AOJs from hearings before the Board, including the duties of the respective VA personnel conducting the hearing. As a result of these changes, it has become standard VA practice and procedure that hearings before AOJs are governed by § 3.103 and hearings before the Board are governed by relevant provisions in part 20. The Court's holding in *Bryant* brought to light that the pertinent regulations do not clearly reflect VA's intent. Therefore, VA has decided to make clarifying changes to §§ 3.103 and 20.706 to ensure that the distinction between the duties of AOJ hearing officers and Board Members (also known as Veterans Law Judges (VLJs), *see* § 19.2(b)) is clear on the face of the pertinent regulations and will not result in further confusion.

In part 3, VA is revising § 3.103(a) to clarify that the provisions governing hearings in § 3.103 only apply to hearings conducted before the AOJ and that the provisions in part 20 govern hearings before the Board. VA is also removing the following language from § 3.103(c)(1): "subject to the limitations described in § 20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review." This language is not necessary since the revision to paragraph (a) clarifies that § 3.103 does not apply to Board hearings. VA is also revising paragraph (c)(1) to change references to "original determinative authority" to "VA office having original jurisdiction". This language is consistent with other portions of § 3.103(c)(1).

In part 20, VA is amending § 20.706 to state that the conduct of hearings by presiding Board Members or VLJs is governed by subpart H of part 20 and that Board Members are not bound by the hearing provisions of § 3.103(c). In Appendix A, VA is removing two cross references to § 3.103 listed for §§ 20.1 and 20.1304 to ensure they do not cause any confusion regarding the correct applicability of § 3.103.

Administrative Procedure Act

This document merely clarifies current procedures for obtaining and conducting a hearing on a claim for VA benefits before the VA agency of original jurisdiction or the Board. It does not create new procedure, and no substantive change is intended. Accordingly, this document is being published as a final rule pursuant to 5 U.S.C. 553(b)(A), which excepts procedural rules from the APA's notice-and-comment and delayed effective date requirements.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only individual VA beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866—Regulatory Planning and Review

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

VA has examined the economic, interagency, legal, and policy implications of this rulemaking and has concluded that it is not a significant regulatory action under the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing—Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing—Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on August 16, 2011, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Dated: August 18, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR parts 3 and 20 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.103 by:
■ a. Revising the last sentence of paragraph (a) and adding a new sentence after the last sentence.
■ b. Revising paragraph (c)(1).
The revisions read as follows:

§ 3.103 Procedural due process and appellate rights.

(a) * * * The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3, except that the provisions of this section governing hearings apply only to hearings conducted before the VA office having original jurisdiction over the claim. Hearings before the Board of Veterans' Appeals are governed by part 20 of this chapter.

* * * * *

(c) * * * (1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions, or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees of the VA office having original jurisdiction over the claim to conduct the hearing and to be responsible for establishment

and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more employees of the VA office having original jurisdiction over the claim who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

* * * * *

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart H—Hearings on Appeal

■ 4. Revise § 20.706 to read as follows:

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member is responsible for the conduct of the hearing, in accordance with the provisions of subpart H of this part, administering the oath or affirmation, and ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior. The presiding Member is not bound by the procedures described in § 3.103(c) of this chapter, as those procedures only apply to hearings before the agency of original jurisdiction.

■ 5. Amend APPENDIX A TO PART 20—CROSS-REFERENCES table by:

■ a. Removing entries "20.1"; "38 CFR 3.103(a)"; and "*Statement of policy.*".

■ b. Revising entry 20.1304 to read as follows:

APPENDIX A TO PART 20—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
*	*	*
20.1304	38 CFR 20.700–20.717	See also rehearings.
*	*	*

[FR Doc. 2011–21513 Filed 8–22–11; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 63

RIN 2900–AN73

Health Care for Homeless Veterans Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for contracting with community-based treatment facilities in the Health Care for Homeless Veterans (HCHV) program of the Department of Veterans Affairs (VA). The HCHV program assists certain homeless veterans in obtaining treatment from non-VA community-based providers. The final rule formalizes VA's policies and procedures in connection with this program and clarifies that veterans with substance use disorders may qualify for the program.

DATES: *Effective Date:* September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Hallett, Healthcare for Homeless Veterans Manager, c/o Bedford VA Medical Center, 200 Springs Road, Bldg. 12, Bedford, MA 01730; (781) 687–3187 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The HCHV program is authorized by 38 U.S.C. 2031, under which VA may provide outreach as well as "care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses)" to "veterans suffering from serious mental illness, including veterans who are homeless." One of VA's National priorities is a renewed effort to end homelessness for veterans. For this reason, we are establishing regulations that are consistent with the current administration of this program.

The primary mission of the HCHV program is to use outreach efforts to contact and engage veterans who are homeless and suffering from serious mental illness or a substance use disorder. Many of the veterans for whom the HCHV program is designed have not previously used VA medical services or been enrolled in the VA health care system.

Through the HCHV program, VA identifies homeless veterans with serious mental illness and/or substance use disorder, usually through medical intervention, and offers community-based care to those whose conditions are determined, clinically, to be managed sufficiently that the individuals can participate in such care. We have assisted homeless veterans with substance use disorders through this program because, based on our practical understanding and experience, the vast majority of homeless veterans have substance use disorders. Treating substance use as a mental disorder is consistent with the generally accepted "disease model" of alcoholism and drug addiction treatment, as well as the modern use of medical intervention to treat the condition. We believe that if a substance use disorder is a contributing cause of homelessness, then that disorder is serious; therefore, it is consistent to include such veterans in a program designed for "veterans suffering from serious mental illness, including veterans who are homeless." 38 U.S.C. 2031(a).

Veterans who are identified and who choose to participate in this form of care as part of their treatment plan are then referred by VA to an appropriate non-VA community-based provider. In some cases, VA will continue to actively medically manage the veteran's condition, while in other cases a VA clinician may determine that a veteran can be sufficiently managed through utilization of non-medical resources, such as 12-step programs.

To provide the community-based care, the HCHV program contracts with non-VA community-based providers, such as halfway houses, to provide to these veterans housing and mental health and/or substance use disorder

treatment. VA provides per diem payments to these non-VA community-based providers for the services provided to veterans. The services provided under these contracts are typically short-term, because during their stay veteran-participants are connected with other resources designed to provide longer-term housing. These contracts, and the per diem payment, are governed by the Federal Acquisition Regulations, and the VA supplements thereto contained in the Department of Veterans Affairs Acquisition Regulation, 48 CFR chapter 8. These are the rules that specifically govern requirements exclusive to VA contracting actions.

On December 20, 2010, we proposed to establish a new 38 CFR part 63 for the HCHV program because the program is unique and may be distinguished from therapeutic housing or other VA programs designed to end homelessness. 75 FR 79323. We included a 60-day comment period and invited interested persons to submit written comments on or before February 18, 2011. We received five comments from members of the public.

A commenter stated that she supported this rulemaking and that the HCHV "program has a solid foundation." The commenter further stated that the program "should be successful in finding and helping these veterans in need." We agree that this rulemaking will help VA better serve homeless veterans that have serious mental illness or substance use disorders.

Another commenter stated that we should minimize the paperwork burden on veterans by designing and implementing a single information technology program that agencies can use to share information about the veteran. Although we generally agree that technology increases the possibilities for reduced paperwork from veterans and increased information-sharing within the government, this comment is outside the scope of this rulemaking. The proposed rule addressed contracting with non-VA community-based providers to furnish services to certain homeless veterans while the comment addresses information sharing. We note that the only collection of information required by this rulemaking places obligations on the non-VA community based providers with whom VA would contract, not homeless veterans. Veterans will only have to meet the eligibility criteria in § 63.13(a).

The same commenter suggested that VA form "contract[s with] facilities that have multiple uses under one roof, providing shelters, social and health services * * *, and medical services" in a single facility, so that "the homeless veteran will only have to go to one facility to receive treatment and or live." The commenter suggests that such a facility would eliminate the burden of travelling to different locations and repeating paperwork at each one.

Section 63.10(a) authorizes VA to "award per diem contracts to non-VA community-based providers who provide temporary residential assistance" and "who can provide the specific services" covered by the HCHV program regulations. In turn, § 63.15 identifies covered services as including therapeutic and rehabilitative services; structured group activities, such as group therapy and professional counseling; and residential room and board. Thus, the HCHV program offers veterans the opportunity to have many of their needs met at one particular facility; however, medical needs must be addressed at an appropriate medical facility. Moreover, rather than restrict the location of services to "one facility," we encourage non-VA community-based providers to utilize community services because, based on our experience, we believe that the use of community resources is vital to the success of homelessness programs and in helping veterans return to the community as healthy, productive citizens. We also note that VA social workers and caseworkers work closely to place veterans in the HCHV program, providing assistance with any paperwork and/or logistical burdens.

Additionally, the rule clearly requires the contract facility to assist veterans in obtaining community resources and assistance, and applicants are scored based in part on proximity to public transportation and community interaction. Thus, we believe that this population of veterans is better served by organizations that encourage involvement in the community, rather than those that treat the population in a more institutionalized fashion by providing all services under one roof. We make no change based on the comment.

A commenter asked what happens to homeless veterans who do not meet the eligibility requirements for the HCHV program and recommended that the program be open to all homeless veterans.

The proposed rule addressed homeless veterans, who are seriously mentally ill and/or have substance use disorders, while the comment addresses other veterans who do not meet the eligibility criteria of the HCHV program. These criteria are prescribed by 38 U.S.C. 2031, which we interpret as authorizing VA authority to provide care to veterans who are both homeless and seriously mentally ill. Section 2031 does not authorize the broader program proposed by the commenter. We discuss this interpretation in greater detail in response to a later comment, and make no change based on this comment. However, we note that to the extent some homeless veterans will not be covered by this program because they are not seriously mentally ill, they will be eligible for a wide variety of VA programs designed to reduce or eradicate homelessness in our Nation's veteran population, many of which are not specifically targeted to veterans that have serious mental illness. These include housing support programs such as the Grant and Per Diem Program, the Department of Housing and Urban Development and VA Supported Housing program, and the Supportive Services for Veteran Families program.

A commenter requested that VA prescribe rules regarding assistance for covered veterans after they receive the prescribed 6 months of treatment and regarding veterans who are not rehabilitated by the 6-month course of treatment.

The proposed rule addressed VA's authority to contract with non-VA community-based providers in the administration of the HCHV program, which is designed to address the short-term, immediate needs of this veteran population, while, simultaneously, efforts are made to connect the population with resources that can provide assistance with permanent housing and other long-term needs that the HCHV program is not equipped to address.

VA anticipates that the vast majority of veterans who are the subject of a contract with a non-VA community based provider under this program will have transitioned to a longer term support structure at the end of the 6-month period prescribed by this rule. At that point, the veteran will likely still be receiving other VA benefits and services. It is possible that in some situations, VA will need additional time, beyond 6 months, to connect a veteran with a particularly challenging case to other services, whether provided by VA or not. In such a situation, the rule envisions the possibility of extending the contract period for "extraordinary circumstances" in § 63.10(c)(2). Therefore, we make no change based on this comment.

A commenter expressed concern that the proposed regulation "would enact a more restrictive interpretation regarding eligibility than Congress intended"

under 38 U.S.C. 2031(a) because it requires a veteran to be both homeless and have a serious mental disorder. The commenter argues, using statutory interpretation and arguments based on the legislative history of section 2031, that (1) "a veteran's homeless condition is sufficient for assistance" without regard to the veteran having a serious mental illness; and (2) that the proposed rule would make the statutory homelessness requirement "surplusage." The commenter cautions that if VA does not adopt their construction, a "costly adverse judicial determination" could result.

As the commenter points out, judicial review of an agency's construction of a statute it administers is governed by *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). To state the law very briefly, *Chevron* envisions a two-step analysis. If the statute is plain, and the intent of Congress is clear, that is the end of the matter. If, however, the statute is ambiguous on the point at issue, a reviewing court asks whether the agency's construction is reasonable.

We believe the statute is plain on this point. Section 2031(a) provides in pertinent part:

> In providing care and services under [38 U.S.C. 1710] to veterans suffering from serious mental illness, including veterans who are homeless, [VA] may provide (directly or in conjunction with a[nother] governmental or other entity)—(1) outreach services; (2) care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses); and (3) therapeutic transitional housing assistance
> * * *

The statute clearly identifies homeless veterans as a subset of veterans who may be suffering from serious mental illness and therefore in need of medical care pursuant to 38 U.S.C. 1710. Under the plain language of the statute, Congress excluded homeless veterans who do not need medical care for a serious mental illness. Congress has authorized other programs to assist that segment of the homeless veteran population. The reference to section 1710 makes clear that programs authorized by section 2031 are for veterans suffering from serious mental illness only.

Even if the statute is ambiguous, our interpretation that it applies to veterans who are homeless and have a serious mental illness is consistent with Congress' intent. Congress initially enacted what is now section 2031 at 38 U.S.C. 1711. Veterans Health Programs Improvement Act of 1997, Public Law 105–114, Title II, § 202(a). This section was amended and renumbered without substantive change into current section 2031. Homeless Veterans Comprehensive Assistance Act of 2001, Public Law 107–95, § 5(b)(2). A separate House bill which preceded Public Law 105–114 contained language that is for all relevant purposes identical to current section 2031. H.R. 2206 § 2(a), 105th Cong. (1997).

The deliberations surrounding this prior bill clearly illuminate Congressional understanding of the language now found in section 2031. H. Rep. No. 105–293 (1997). Congress found there to be substantial "overlap and redundancy" among many prior VA statutory authorities "targeted primarily to providing psychiatric residential treatment to homeless, *mentally ill* veterans." *Id.* at 10 (emphasis added). Congress therefore undertook to consolidate the authorities for three programs, including the contract halfway-house care program for veterans suffering from alcohol and drug dependence, the community-based residential care program for homeless chronically mentally ill veterans, and a program providing transitional therapeutic housing, into one statute. *Id.* at 12. Congress plainly intended current section 2031 to authorize psychiatric residential treatment to homeless veterans who are also mentally ill; all three authorities combined into current section 2031 dealt with treatment for veterans suffering from some kind of mental illness or otherwise requiring therapeutic residential treatment.

Furthermore, the legislative history presented in support of the comment is not persuasive. The commenter argues that Congress intended to reach veterans who are homeless without regard to their having a serious mental illness based on an interpretation of a prior version of the statute using definitions from 24 CFR 91.5, which are regulations promulgated by the Department of Housing and Urban Development (HUD), which is not charged with interpreting VA statutes. Thus, HUD's definitions are simply inapplicable.

Additionally, the commenter's argument, even taken at face value, would at most affect the proper understanding of the term "homeless" and would not on its own dictate the proper interpretation of section 2031. The commenter notes that former 38 U.S.C. 2001 indicates that 38 U.S.C. chapter 20 used to address "chronic homelessness," which required as a criterion serious mental illness or some other kind of disability. The commenter argues this has been replaced with the more general term, "homeless." Even if true, this analysis would only affect the proper understanding of the term "homeless," implying that term does not necessarily include serious mental illness. However, under our interpretation of section 2031, serious mental illness is a freestanding criterion. Since serious mental illness is a separate requirement in the statute, we do not believe the commenter's argument affects our construction of the proper scope of this program. Our interpretation is reasonable because Congress could not have intended that homelessness alone indicates a severe mental illness requiring the kind of care authorized by sections 2031 and 1710. As the commenter points out, up to 20 percent of homeless veterans are homeless for reasons other than mental illness. This fact is irreconcilable with the idea that "homeless" is a subset, or type of, serious mental illness, which is the construction urged by the commenter. As for the comment that our rule would make homelessness surplusage, we must, again disagree. Pursuant to § 63.3(a)(1), eligibility is predicated on the veteran being homeless, and under § 63.10(a), contracts are authorized only to non-VA community-based providers who provide temporary residential assistance for homeless persons.

Finally, we note that the program as implemented by VA and described in this rule will reach most homeless veterans, up to 80 percent. As stated in the proposed rule, chronic homelessness is generally caused by substance abuse or serious mental illness. Congress determined for purposes of this program that VA should allocate some of its mental health care resources to target homelessness caused by serious mental illness. As described above, we do not interpret current law as authorizing VA to focus mental health care resources on those who are not mentally ill. Additionally, Congress has determined that veterans who are homeless for other reasons will qualify for other VA programs and services. *See, e.g.*, 38 U.S.C. 2021–23, 2041–44. This reinforces our view that section 2031 is intended to reach seriously mentally ill homeless veterans because this population is not specifically identified elsewhere in 38 U.S.C. chapter 20.

The commenter also hypothesizes that the additional expenditure of resources that would be required by the commenter's interpretation of the law, expanding the program to cover homelessness regardless of mental illness, would be offset by savings in clinician time. The commenter argues that clinicians would not need to make any determination regarding mental

illness if the program covered every homeless veteran. As we explain above, we do not interpret section 2031 to authorize VA to allocate its limited mental health care resources to veterans who are not mentally ill. Therefore, the question of whether or not the reduction in "billable time" realized by not determining whether a veteran is seriously mentally ill adds up to more or less than the cost of paying per diem on behalf of that veteran for up to 6 months is not relevant.

The commenters also cited the numbers of homeless veterans who are not eligible for the HCHV program. We make no change based on the commenter's request that we amend the rules "to include a specific reference to programs" that address homeless veterans who are not seriously mentally ill. We have identified several such programs in this notice, but it would be unwise to include a definitive statement in the rule since VA's list of programs targeted at this difficult problem is constantly evolving, and it would be a needless waste of resources to have to amend and update 38 CFR part 63 every time VA altered or added an unrelated program. Further, the purpose of this rulemaking is to prescribe rules that govern a specific program. It is not intended as a general notice regarding the various benefits and services that may be available to homeless veterans. VA uses outreach and other methods to advise veterans regarding the benefits that may be available to them.

Although we are not making any changes to the rule based on the comments, we do make one minor administrative change. We are inserting a comma after the word "training" in the first sentence of § 63.15(b)(1). This fixes a typographical error of omission in the proposed rule. We are not altering the substantive content of the paragraph by making this change.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the technical change noted above.

Paperwork Reduction Act

This final rule at § 63.15(e)(3) contains a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). On December 20, 2010, in the proposed rule published in the **Federal Register**, we requested public comment on the new collection of information. We received no comments concerning the new collection of information. OMB has approved the information collection requirement for § 63.15(e)(3) as a revision to OMB Control Number 2900–0091.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that only a small portion of the business of health care providers, suppliers, or similar entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs 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 Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such a review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, and Tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 27, 2011, for publication.

List of Subjects in 38 CFR Part 63

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Health care, Homeless, Housing, Individuals with disabilities, Low and moderate income housing, Public assistance programs, Public housing, Relocation assistance, Reporting and recordkeeping requirements, Veterans.

Dated: August 17, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR chapter I by adding part 63 to read as follows:

PART 63—HEALTH CARE FOR HOMELESS VETERANS (HCHV) PROGRAM

Sec.

Authority: 38 U.S.C. 501, 2031, and as noted in specific sections.

§ 63.1 Purpose and scope.

This part implements the Health Care for Homeless Veterans (HCHV) program. This program provides per diem payments to non-VA community-based facilities that provide housing, as well

as care, treatment and/or rehabilitative services, to homeless veterans who are seriously mentally ill or have a substance use disorder.

(Authority: 38 U.S.C. 501, 2031(a)(2))

§ 63.2 Definitions.

For the purposes of this part:

Clinician means a physician, physician assistant, nurse practitioner, psychiatrist, psychologist, or other independent licensed practitioner.

Homeless has the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)).

Non-VA community-based provider means a facility in a community that provides temporary, short-term housing (generally up to 6 months) for the homeless, as well as services such as rehabilitation services, community outreach, and basic mental-health services.

Participant means an eligible veteran under § 63.3 for whom VA is paying per diem to a non-VA community-based provider.

Serious mental illness means diagnosed mental illness that actually or potentially contributes to a veteran's homelessness.

Substance use disorder means alcoholism or addiction to a drug that actually or potentially contributes to a veteran's homelessness.

(Authority: 501, 2002, 2031)

§ 63.3 Eligible veterans.

(a) *Eligibility.* In order to serve as the basis for a per diem payment through the HCHV program, a veteran served by the non-VA community-based provider must be:

(1) Homeless;

(2) Enrolled in the VA health care system, or eligible for VA health care under 38 CFR 17.36 or 17.37; and

(3) Have a serious mental illness and/or substance use disorder,

(i) That has been diagnosed by a VA clinician,

(ii) Is "clinically managed" as determined by a VA clinician (clinical management of a condition may be achieved through non-medical intervention such as participation in a 12-step program), and

(iii) Impacts the veteran's ability for self-care and/or management of financial affairs as determined by a VA caseworker (*i.e.*, a clinician, social worker, or addiction specialist).

(b) *Priority veterans.* In allocating HCHV program resources, VA will give priority to veterans, in the following order, who:

(1) Are new to the VA health care system as a result of VA outreach efforts, and to those referred to VA by community agencies that primarily serve the homeless population, such as shelters, homeless day centers, and soup kitchens.

(2) Have service-connected disabilities.

(3) All other veterans.

(c) VA will refer a veteran to a non-VA community-based provider after VA determines the veteran's eligibility and priority.

(Authority: 38 U.S.C. 501, 2031)

§ 63.10 Selection of non-VA community-based providers.

(a) *Who can apply.* VA may award per diem contracts to non-VA community-based providers who provide temporary residential assistance for homeless persons with serious mental illness, and/or substance use disorders, and who can provide the specific services and meet the standards identified in § 63.15 and elsewhere in this part.

(b) *Awarding contracts.* Contracts for services authorized under this section will be awarded in accordance with applicable VA and Federal procurement procedures in 48 CFR chapters 1 and 8. Such contracts will be awarded only after the quality, effectiveness and safety of the applicant's program and facilities have been ascertained to VA's satisfaction, and then only to applicants determined by VA to meet the requirements of this part.

(c) *Per diem rates and duration of contract periods.*

(1) Per diem rates are to be negotiated as a contract term between VA and the non-VA community-based provider; however, the negotiated rate must be based on local community needs, standards, and practices.

(2) Contracts with non-VA community-based providers will establish the length of time for which VA may pay per diem based on an individual veteran; however, VA will not authorize the payment of per diem for an individual veteran for a period of more than 6 months absent extraordinary circumstances.

(Authority: 38 U.S.C. 501, 2031)

§ 63.15 Duties of, and standards applicable to, non-VA community-based providers.

A non-VA community-based provider must meet all of the standards and provide the appropriate services identified in this section, as well as any additional requirements set forth in a specific contract.

(a) *Facility safety requirements.* The facility must meet all applicable safety requirements set forth in 38 CFR 17.81(a).

(b) *Treatment plans and therapeutic/rehabilitative services.* Individualized treatment plans are to be developed through a joint effort of the veteran, non-VA community-based provider staff and VA clinical staff. Therapeutic and rehabilitative services must be provided by the non-VA community-based provider as described in the treatment plan. In some cases, VA may complement the non-VA community-based provider's program with added treatment services such as participation in VA outpatient programs. Services provided by the non-VA community-based provider generally should include, as appropriate:

(1) Structured group activities such as group therapy, social skills training, self-help group meetings or peer counseling.

(2) Professional counseling, including counseling on self care skills, adaptive coping skills and, as appropriate, vocational rehabilitation counseling, in collaboration with VA programs and community resources.

(c) *Quality of life, room and board.*

(1) The non-VA community-based provider must provide residential room and board in an environment that promotes a lifestyle free of substance abuse.

(2) The environment must be conducive to social interaction, supportive of recovery models and the fullest development of the resident's rehabilitative potential.

(3) Residents must be assisted in maintaining an acceptable level of personal hygiene and grooming.

(4) Residential programs must provide laundry facilities.

(5) VA will give preference to facilities located close to public transportation and/or areas that provide employment.

(6) The program must promote community interaction, as demonstrated by the nature of scheduled activities or by information about resident involvement with community activities, volunteers, and local consumer services.

(7) Adequate meals must be provided in a setting that encourages social interaction; nutritious snacks between meals and before bedtime must be available.

(d) *Staffing.* The non-VA community-based provider must employ sufficient professional staff and other personnel to carry out the policies and procedures of the program. There will be at a minimum, an employee on duty on the premises, or residing at the program and available for emergencies, 24 hours a day, 7 days a week. Staff interaction with residents should convey an attitude of genuine concern and caring.

(e) *Inspections.* (1) VA must be permitted to conduct an initial inspection prior to the award of the contract and follow-up inspections of the non-VA community-based provider's facility and records. At inspections, the non-VA community-based provider must make available the documentation described in paragraph (e)(3) of this section.

(2) If problems are identified as a result of an inspection, VA will establish a plan of correction and schedule a follow-up inspection to ensure that the problems are corrected. Contracts will not be awarded or renewed until noted deficiencies have been eliminated to the satisfaction of the inspector.

(3) Non-VA community-based providers must keep sufficient documentation to support a finding that they comply with this section, including accurate records of participants' lengths of stay, and these records must be made available at all VA inspections.

(4) Inspections under this section may be conducted without prior notice.

(f) *Rights of veteran participants.* The non-VA community-based provider must comply with all applicable patients' rights provisions set forth in 38 CFR 17.33.

(g) *Services and supplies.* VA per diem payments under this part will include the services specified in the contract and any other services or supplies normally provided without extra charge to other participants in the non-VA community-based provider's program.

(Authority: 38 U.S.C. 501, 2031)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0091.)

[FR Doc. 2011–21407 Filed 8–22–11; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 912

Procedures To Adjudicate Claims for Personal Injury or Property Damage Arising Out of the Operation of the U.S. Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service's regulations concerning tort claims to update the mailing address of the National Tort Center.

DATES: *Effective Date:* August 23, 2011.

ADDRESSES: Written communications should be directed to: General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155–9948.

FOR FURTHER INFORMATION CONTACT: Ruth A. Przybeck, Chief Counsel, Torts, (314) 345–5820.

SUPPLEMENTARY INFORMATION: Amendment of 39 CFR part 912 is necessary to update the mailing address of the National Tort Center. This rule is a change in agency rules of procedure that does not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for its adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 912

Administrative practice and procedure; Claims.

For the reasons set forth above, the Postal Service amends 39 CFR Part 912 as follows:

PART 912—[AMENDED]

■ 1. The authority citation for 39 CFR part 912 continues to read as follows:

Authority: 28 U.S.C. 2671–2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

■ 2. In § 912.4, remove the address "Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63141–0640" and add "Chief Counsel, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155–9948" in its place.

■ 3. Amend § 912.9 as follows:

■ a. In paragraph (b), remove the address "Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63141–0640" and add "Chief Counsel, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155–9948" in its place.

■ b. In paragraph (c), remove the address "Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63141–0640" and add "Chief Counsel, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155–9948" in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–21444 Filed 8–22–11; 8:45 am]

BILLING CODE 7710–12–P

Proposed Rules

Federal Register
Vol. 76, No. 163
Tuesday, August 23, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 277

RIN 0584–AD99

Automated Data Processing and Information Retrieval System Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Supplemental Nutrition Assistance Program (SNAP)—formerly the Food Stamp Program) regulations to implement the Food, Conservation, and Energy Act of 2008 (the Farm Bill), which requires adequate system testing before and after implementation of a new State automatic data processing (ADP) and information retrieval system, including the evaluation of data from pilot projects in limited areas for major systems changes, before the Secretary approves the system to be implemented more broadly. It also provides that systems be operated in accordance with an adequate plan for continuous updating to reflect changed policy and circumstances, and for testing the effects of the system on access by eligible households and on payment accuracy. This proposed rule would also specify the requirements for submission of a test plan. Further, the rule proposes changing the due date of an Advance Planning Document Update (APDU) from 90 days after to 60 days prior to the expiration of the Federal financial participation (FFP) approval and revises language regarding the Federal share of costs in consolidated information technology (IT) operations to specify that the threshold for service agreements applies to federally aided public assistance programs, rather than to SNAP alone. In addition, this rule proposes to amend the SNAP regulations relating to the establishment of an automated data processing and information retrieval system and to provide clarifications and updates which have occurred since this section was last updated in 1996.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- Preferred method: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov;* follow the online instructions for submitting comments on docket FNS–2009–0020.
- *Mail:* Comments should be addressed to Neva Terry, Director, State Systems Office, Food and Nutrition Service—USDA, 3101 Park Center Drive, Room 820, Alexandria, VA 22302–1500.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, State Systems Office, 3101 Park Center Drive, Room 820, Alexandria, Virginia 22302–1500, during business hours of 9 a.m.–4:30 p.m. Eastern Time, from Monday–Friday, excluding Federal holidays.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov.* All written submissions will be available for public inspection at the address above during regular business hours.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Neva Terry, Director, State Systems Office, at the above address if mailed, by telephone at (703) 605–4315 or via the Internet at *neva.terry@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information on Comment Filing

Written Comments

Comments on the proposed rule should be specific, confined to issues pertinent to the proposal, and explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record those comments received after the close of the comment period or comments delivered to an address other than that listed above.

II. Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been designated non-significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule would not have significant economic impact on a substantial number of small entities. State agencies which administer SNAP will be affected to the extent that they implement new State automated systems or major changes to existing systems.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the

Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at [48 FR 29114 for SNP; 48 FR 29115 for FSP], June 24, 1983, this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132 (Prior Consultation With State Officials, Nature of Concerns and the Need To Issue This Rule, and Extent to Which We Meet Those Concerns). FNS has considered the impact of this rule on State and local governments and determined that this rule does not have Federalism implications. This proposed rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Executive Order 13175

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the affect of this and other rules on tribes or Indian Tribal governments, or whether this rule may preempt Tribal law. In regard to this rule, no adverse comments were offered at those sessions. Further, the policies contained in this rule would not have Tribal implications that preempt Tribal law. Reports from the consultative sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will offer future opportunities, such as webinars and teleconferences, for collaborative conversations with Tribal leaders and their representatives concerning ways to improve rules with regard to their affect on Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, FNS has determined that there are no civil rights impacts in this proposed rule. All data available to FNS indicate that protected individuals have the same opportunity to participate in SNAP as non-protected individuals.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on age, race, color, sex, handicap, religious creed, national origin, or political beliefs. SNAP nondiscrimination policy can be found at 7 CFR 272.6 (a). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS has submitted an information collection under 0584–0083, which contains the changes in burden from adoption of the proposals in the rule, for OMB's review and approval.

Comments on the information collection in this proposed rule must be received by October 24, 2011.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Neva Terry, Director, State Systems Office, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 820, Alexandria, VA 22302–1500. For further information, or for copies of the information collection requirements, please contact Neva Terry at the address indicated above.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

This is a revision of a currently approved collection. The new provisions in this rule, which do not increase burden hours, affect the information collection requirements that will be merged into OMB Control Number 0584–0083, once approved by OMB. The current burden inventory for this collection is 0584–0083. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Title: Supporting Statement for Paperwork Reduction Act Submission.

OMB Number: 0584–0083.

Expiration Date: 12/31/2013.

Type of Request: Revision of a currently approved collection;

Abstract: This proposed rule will have no impact on the State agency workload with regard to the additional testing requirements, as rigorous testing is already part of any well-managed systems project. Most State agencies will recognize the similarities between the documents already prepared during customary System Development Life Cycle (SDLC) processes, and those required by the SNAP APD approval processes. Although FNS is proposing to require information from State agencies on their plans for adequate system testing, FNS believes this information is already part of the regular SDLC process; it should already be in the State agencies' possession and only needs to be submitted to FNS for review and approval.

Further, information collections associated with maintenance and operation (M&O) procurements prescribed under 7 CFR 277.18 would be reduced as systems move past their implementation phase. Currently, State agencies are required to submit to FNS Implementation APDs (IAPD) for M&O of their ADP systems. As proposed, State agencies would no longer be required to submit this IAPD information unless they contain significant changes such as system development through modifications and/or enhancements. State agencies will continue to be asked to provide copies to FNS of the requests for proposals and contracts relating to system M&O.

Currently it is estimated that up to 53 State agencies may submit on an average of five (5) APD, Plan, or Update submission for a total of 265 annual responses at an average estimate of 2.5 hours per respondent. The reporting burden is 662.5 hours. In addition, FNS estimated that up to 53 State agencies may submit on an average of 5 APD, Plan, or Update submission and approximately 265 records at an average estimate of .11 minutes per recordkeeper for an estimated total of 29.15 recordkeeping burden for this activity hours per recordkeeper. Since this proposed rule will lessen the burden for submittal of M&O IAPDs it is now estimated that the burden will lessen to four (4) APD, Plan or Update submittals.

The average burden per response, the annual burden hours and the annualized cost to respondents are summarized in the charts which follow.

REPORTING ESTIMATES OF HOUR BURDEN

Affected public	Activity	Number of respondents	Frequency of response	Total annual responses	Time per response	Annual reporting burden
State Agencies	Other APD Plan or Update.	53	4	212	2.5	530

RECORDKEEPING BURDEN

Activity	Number of recordkeepers	Number of records per respondent	Est. total annual records	Hours per recordkeeper	Total burden
Other APD Plan or Update	53	4	212	0.11	23.32

ANNUALIZED COST TO RESPONDENTS

	Type of survey instruments	Reporting and recordkeeping burden	Hourly wage rate	Respondent cost—prior to Federal cost sharing
	Other APD Plan or Update	553.32	$33.29	$18,420
Total		7,463.26	33.29	246,310

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

III. Background

Section 4121 of the Food, Conservation and Energy Act of 2008 amends subsection 16(g) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016) to require adequate system testing before and after implementation of a new State ADP and information retrieval system, including the evaluation of data from pilot projects in limited areas for major systems changes, before the Secretary approves the system to be implemented more broadly. It also provides that systems be operated in accordance with an adequate plan for continuous updating to reflect changed policy and circumstances, and for testing the effects

of the system on access by eligible households and on payment accuracy.

Systems development or acquisition, whether in the public or private sector, goes through a detailed process of planning, analysis, preparation, budgeting, and negotiation. In order to receive Federal funding to develop, acquire, and/or implement information systems (IS) that support the operation of FNS programs there are policies and procedures that State agencies must follow. This is referred to as the Advance Planning Document (APD) process which employs common industry standards that are required for any well-planned and executed Systems Development Life Cycle (SDLC) project. The preparation, submission, review, approval, and use of the APD process and its related documents for project planning, management, and control purposes comprise the successive steps through which a State agency can meet Federal oversight requirements and subsequently receive Federal written prior approval and financial participation in IT projects.

In developing this proposed rule, FNS has drawn on its experience with State IS and with systems for Electronic Benefits Transfer in the SNAP. FNS views this rule as having minimal impact on State agency workload with regard to the additional testing requirements, as rigorous testing is already part of any well-managed IS project. Most State agencies will recognize the similarities between the documents already prepared during customary SDLC processes, and those proposed to be required by the SNAP APD approval processes. This regulation proposes to codify the testing standards already found in well managed State projects in order to assure that all State agencies meet those standards.

Many State agencies already include testing and pilot projects as well as some form of graduated roll out when implementing major systems. System testing is part of the overall project management and risk management planning process; testing is essential for successful system implementation outcomes. In the past few years, some State agencies have attempted aggressive implementation schedules of major system and program changes, which have had adverse effects on household access to SNAP benefits and payment accuracy. Section 4121 of the Farm Bill reflects Congress' concern that USDA use the Federal approval process to more deliberately review and monitor State agencies' plans for major system implementations, and encourage all State agencies to implement new systems using sound testing practices. Since the access of needy people to nutrition assistance is dependent upon the proper functioning of SNAP automated systems, FNS is now required to ensure that all eligibility systems are adequately reviewed and tested.

The law requires accountability for ensuring test results are satisfactory prior to system implementation as a condition for continued funding of the project. If a State makes a decision to proceed to the next phase of the project (a "go/no-go" decision point, such as testing or pilot) when significant errors have been identified but are not resolved satisfactorily to support the decision to proceed, FNS can suspend or disallow Federal funds in whole or in part until the problems are resolved.

Section 277.18 of the FNS regulations addresses the Establishment of an Automated Data Processing and Information Retrieval System. Section 277.18(n) (Basis for continued Federal financial participation) is proposed to be amended as a result of Section 4121 of the Farm Bill regarding IS testing. In addition, this regulation proposes to add or modify the following requirements:

- Change the Annual APDU due date from 90 days after anniversary of approval to 60 days prior to the expiration of the FFP approval;
- Revise language regarding Federal share of costs in consolidated IT operations, consistent with the Department of Health and Human Services (DHHS), to specify the threshold for service agreements applies to federally aided public assistance programs, rather than to SNAP alone; and
- Propose clarification and simplification of existing regulations relating to the APD process.

1. What changes is FNS proposing for 277.18(n), basis for continued Federal financial participation, as a result of the Food, Conservation and Energy Act of 2008?

FNS is proposing to move section 277.18(n) (Basis for continued Federal financial participation) and renumber it as 277.18(g). In addition, proposed language is being added to describe FNS' expectations for a detailed testing plan starting at User Acceptance Testing (UAT) through pilot testing and including opportunities for State agency and/or Federal reviews prior to UAT as well as after the system is fully implemented.

State agencies would submit a test plan which describes how all system testing will be conducted in order to verify that the system complies with SNAP requirements and system design specifications. The level of detail specified in proposed section 277.18(g)(2) would be provided to FNS prior to the State agency beginning its testing of the system. The test plan would include a contingency plan component which identifies alternative strategies that may be used if specific risk events occur, such as a failure of test results to support a decision to proceed to the next phase of the project. Examples include alternative schedule activities, staffing plans and emergency responses to reduce the impact of risk events.

2. What would need to be addressed in the contingency plan for testing?

Under the pressures of an overly optimistic schedule, a State agency may feel compelled to move forward with a project even when testing results indicate that the system is not ready for the next step. The purpose of a testing contingency plan is to assure FNS that the State agency has an agreed upon alternative in place if testing indicates that the system is not ready to progress to the next stage. The plan should address what steps will be taken in response to an excessive failure rate or "no-go" decision at any point in the testing process. Such steps might include: Delaying or revising staffing plans; rescheduling training; adjusting pilot plans; and/or extending, rescheduling or redeploying testing resources such as space, contractor and state staff, servers and other equipment. Plans might include researching, in advance, the authority to exercise personnel policies, utilize overtime pay or compensatory time, or to withdraw or reschedule approved discretionary leave. It should also include plans for revising other dependent schedules such as those for legacy system maintenance or the implementation of required annual mass changes. The plan should address who has the authority to activate contingency procedures and how decisions will be made. Contingency plans should address both project and business dependencies. Although FNS would not dictate exactly what must be included, the plan would be expected to demonstrate the State agency's awareness that testing is, by definition, the period when problems are identified which may result in delays. The plan must demonstrate that the State agency is prepared to adjust and "fall back" to a sustainable position to continue testing when necessary, and not allow a project to proceed with unacceptable risks in order to stay on schedule.

3. How will FNS assess the adequacy of a State agency's system test plan?

As proposed, FNS would review a State agency's overall plan to ensure that risk is mitigated and managed to the extent feasible. FNS' examination of State agencies' plans would include, but not be limited to, the following areas: Risk management, rigorous methodologies, industry standards, professional test management, repeatable test processes, specific pass/fail metrics, adequate time allotted for testing, and an unbiased decision-making process.

FNS intends to use a pro-active analysis of State test plans. Results from the UAT and Pilot Test and others, if appropriate, would be evaluated from a system perspective as well as a program perspective to determine whether their outcomes can be considered successful.

Although successful UAT and Pilot Test are commonly used decision points, "go/no-go" points may be established at any milestone in the SDLC to assess the project status and determine if continuing to the next phase is in the best interest of the project. The project should not advance to the next phase until all critical criteria are satisfactorily addressed. FFP could be in jeopardy if the State agency advances to the next phase without FNS approval.

4. What data will a State agency need to provide to FNS to demonstrate its system testing is adequate?

The State agency will need to provide a preliminary test plan in its initial IAPD, a final test plan prior to the start of the testing phase, and test results throughout the testing phase. FNS proposes to evaluate the initial information provided by a State agency to determine if the State agency's plans, methodology, results tracking and analysis approach are adequate, and whether additional information is needed. FNS intends to work with the State agency to determine what information is practicable and require only information that is necessary and not otherwise available. FNS would expect to negotiate the reporting requirements necessary to evaluate system performance with each State agency.

5. What would be considered adequate system testing?

Even before State testing begins, "adequate testing" should include holding the system developer responsible for delivering a product that has been thoroughly tested by the developer and is ready for UAT. Adequate testing includes ensuring that high standards for test results are set and met before the system is considered to have passed the tests and be ready for the next phase. However, once delivered, the State agency must validate that the system meets the performance expectations and all functional requirements described in the functional design specifications document. Testing methodology must be rigorous and results must be documented thoroughly. If errors are identified in the system's functionality or performance, the fixes the developer makes to the system to resolve these errors should be regression tested. Regression testing is the process that requires the users to validate that the error has been fixed and that the fix does not adversely impact the system in other ways. Only when these conditions are met can testing be considered adequate to demonstrate that the system is ready for pilot.

Documentation of the results of performance and UAT of the system before the system is piloted in a production environment needs to be provided to FNS and FNS concurrence to advance from testing to pilot will be a condition for continued FFP. Also, the State agency needs to provide documentation to FNS of the pilot evaluation. FNS' approval to implement the system more broadly will also be a condition for continued FFP.

6. What is meant by UAT?

User Acceptance Testing (UAT) is a crucial part of the integration and testing phase of the SDLC. UAT is necessary to confirm that the developed system meets all State agency functional and technical requirements. Testers should work with users early in the project to define system criteria for meeting user needs, incorporate them into the acceptance test plan, and create detailed test scripts. UAT should be conducted in a user environment in which simulated or real target platforms and infrastructures are used. This environment should be separate from the development and production environments, but as similar to the production environment as possible. Typically, a separate test environment is set up for testing by developers and an additional test environment is set up for UAT.

UAT is a final test of the complete SDLC that is conducted prior to pilot and implementation and the point at which the State agency "accepts" the system. It involves testing the system capabilities as documented in the system design, and is a precursor to accepting delivery of the system. Functional demonstrations and acceptance testing should be completed prior to implementation of the pilot. FNS staff may participate to a limited extent in the functional demonstrations and acceptance testing.

7. What are the components of a successful UAT?

A State agency should develop a formal test plan for UAT that includes real-life scenarios and establishes error severity levels, error tracking software, results reporting, and regression testing. The system should be tested from end-to-end, including both normal and abnormal conditions such as user mistakes. Once the UAT plan is executed, an acceptance decision is made based on the results of this testing, followed by users' sign-off upon successful completion of the UAT plan.

8. What is the purpose of the Pilot Test?

The purpose of the Pilot Test (Pilot) is to provide the State agency with a smaller scale shakedown test prior to expansion. Most State agencies recognize the need for Pilot project operations and first implement systems on a small scale. The length of the Pilot would need to be agreed upon by the State agency and FNS. Some of the factors that would need to be taken into consideration will be the size of the Pilot; the rate of phase-in of the Pilot caseload; and the track record, if any, of the system being implemented. A Pilot is important for more than just providing a dry run for the computer system. It is also an opportunity for State agencies to determine and ensure that that all parties (e.g. recipients and State/local staffs) are comfortable with the system, the State agency's approach to training is effective, and any program and system interfaces are effective. This rule does not remove the latitude provided to State agencies in choosing the Pilot sites. State agencies should, however, take into consideration how well the Pilot's caseload represents the demands on the fully operational system.

The Pilot is a key milestone in project development and occurs when a fully functional prototype system is available for testing, but before statewide implementation. The Pilot needs to include operating all components of the system in a live environment. The State agency should define its own "go/no-go" criteria and FNS may also establish additional "go/no-go" criteria and decision points for continuing with system implementation of the project. In some cases, FNS may make approval of Federal funds for implementation conditional on the result of the Pilot.

FNS may also participate in the Pilot to assist and corroborate the findings of the State agency.

Under this proposal, State agencies would likely be reporting activity to FNS for the duration of the Pilot, which would provide FNS with an opportunity to monitor Pilot activities, anticipate the success of the Pilot, and determine if rollout may occur. The State agency must allow sufficient time after the Pilot period to evaluate Pilot results and secure FNS concurrence for rollout.

Pilot tests may also be necessary in limited areas for major system changes. FNS proposes to interpret the limited area as not synonymous with a geographic area, but rather focus on a limited scale or scope of the Pilot.

9. How does a State agency move forward and expand beyond the pilot phase?

Upon successful completion of the Pilot project, the State agency would have to receive written approval from FNS before expanding beyond the Pilot. This rule proposes at paragraph 277.18(g)(2)(ii) that State agencies operate Pilot projects until a state of routine operation is reached with the full caseload in the Pilot area (usually a minimum duration of three months). This waiting period would permit the system to work through all functions and potential system problems.

10. Does FNS propose to certify system testing and outcomes?

No. To "certify" a system generally means that the certifying entity verifies through independent evaluation that a fixed set of standardized tests have been passed or criteria on a standard checklist have been met. The certifying agency issues some sort of statement or document attesting to the certification, which may have legal implications. FNS does not certify systems or system testing. FNS may, however, conduct pre and/or post implementation reviews. These reviews would be intended to: Evaluate system performance and accuracy; verify that functional requirements were met; ensure that the policy to be administered is accurate; analyze data capture, integrity edits and calculations; verify that UAT was thorough and successfully completed; and, ensure that the system interfaces successfully with other programs and external entities, including EBT. FNS may conduct reviews either onsite or by examining relevant documents provided by the State agency. Post implementation reviews may be conducted once the system is fully operational Statewide. These system reviews encompass technical and security components as well as program and financial aspects. Reviews by FNS are a function of its regulatory oversight authority. Resolution of any issues identified or completion of corrective action required by FNS, and subsequent closure of a report, review or project does not constitute "certification."

11. Why is FNS proposing changes to the annual Advanced Planning Document Update (APDU) due date?

FNS proposes in paragraph 277.18(c)(3)(i)(C) to align the due date for the annual APDU from the current requirement of within 90 days after the anniversary date of the original APD approval to the current Department of Health and Human Services (DHHS) requirement of 60 days prior to the expiration of the FFP approval. Although this proposal shortens the timeframe provided to State agencies for submission of annual updates, since most APDs are submitted to both USDA and DHHS, FNS believes creating consistency on this due date would simplify the process for State agencies and increase the likelihood that the document will be submitted timely to both Departments.

12. Why is FNS proposing a change to the provision regarding service agreements?

Service agreements are used when IT services are to be provided by a centralized State facility or another State or local agency. The current regulatory language at paragraph 277.18(f)(6) references the need to obtain FNS approval when these equipment and services will primarily support the SNAP by billing it for more than 50 percent of the total charges made to all users. FNS is proposing to modify this language at paragraph 277.18(e)(6) to clarify that the 50 percent threshold for service agreements applies to the sum total of all Federal public assistance programs and not just the SNAP portion. This modification would make the FNS language more consistent with that of DHHS, which does not identify any specific programs in its regulatory language relating to service agreements.

13. Why is FNS proposing additional changes to the Automated Data Processing and Information Retrieval System requirements section of the regulations beyond those mandated by the Farm Bill?

The last changes made to § 277.18 were in 1996. Since then FNS has identified provisions in this section of the regulations that need clarification and enhancement to improve the public's understanding of the process. Some subsections would be moved and renumbered to improve the flow and clarity of the entire section and improve its usefulness as a reference for regulatory authority.

FNS' intent is to stress the importance of project management and risk management in the system planning process. These are not new concepts, but this renewed emphasis is to assist State agencies' focus on these areas in order to increase the likelihood of positive outcomes.

14. How is FNS changing the current order in § 277.18 and moving provisions within the section?

Paragraph 277.18(a) (Scope and application) provides an introductory statement for the rest of the section. It currently contains a sentence regarding cost allocation which has been moved to paragraph 277.18(j) (General cost requirements).

Paragraph 277.18(d) (APD content requirements) contains a discussion on the cost allocation plan for the Planning APD (PAPD). This is clarified and moved to new paragraph 277.18(d)(1)(vii).

Paragraph 277.18(e) (APD update) is moved and renumbered as 277.18 (d)(3).

Paragraph 277.18(f) (Service agreements) language which requires a State agency to maintain a copy of its service agreements in its files for Federal review is moved from the introductory paragraph to a new paragraph 277.18(e)(9) and the entire paragraph is moved and renumbered as 277.18(e).

Paragraph 277.18(g) (Conditions for receiving FFP), is moved and renumbered as 277.18(f).

Paragraph 277.18(h) (Emergency acquisition requirements), is moved and renumbered as 277.18(i).

Paragraph 277.18(i) (Cost determination and claiming costs) is renamed as General cost requirements, moved, and renumbered as 277.18(j).

Paragraph 277.18(j) (Procurement requirements) is moved and renumbered as 277.18(c)(2)(iii).

Paragraph 277.18(n) (Basis for continued Federal financial participation) is moved and renumbered as 277.18(g)

Paragraph 277.18(o) (Disallowance of Federal financial participation) is moved and renumbered as 277.18(h).

Paragraph 277.18(p) (ADP system security requirements and review process) is moved and renumbered as 277.18(m).

No changes are being made to paragraph 277.18(k) (Access to the system and records).

FNS removed paragraph 277.18(m) (Use of ADP systems) as it was determined to be unnecessary.

15. What terminology changes would be made in this proposed rule?

There are two terminology changes made in § 277.18. All instances of the use of the "Food Stamp Program" or "FSP" are changed to the "Supplemental Nutrition Assistance Program" or "SNAP" the name made effective by the Food, Conservation, and Energy Act of 2008 on October 1, 2008. In addition, all instances of the use of "Automated Data Processing" (ADP) would be changed to "Information System" (IS) or to "Information Technology" (IT), as appropriate given the context of their use.

16. What changes is FNS making to the definitions § 277.18(b)?

This paragraph currently provides definitions for 18 terms commonly used in the remainder of this section. Some definitions are antiquated and therefore would be removed, globally replaced (as discussed in the previous question); or renamed. Others would be incorporated in the subsection that specifically addresses that topic, such as Feasibility Study. Four definitions are added to this section which are not related to new requirements, but intended to provide a ready reference summary for terms used in this section: acquisition, project, Commercial Off-the- Shelf software, and enhancements.

17. Why are definitions proposed to be added for "acquisition" and "project"?

In paragraph 277.18(b) (Definitions), the terms "acquisition" and "project" are changed to clarify the difference between the two. FNS added these definitions to assist the reader in noting that projects and acquisitions are separate events and while they may be related in the holistic view of the project, the review requirements and submission thresholds vary as discussed in paragraph 277.18(c).

18. Why is the definition of Commercial Off-the-Shelf software added to the regulation?

In paragraph 277.18(b) (Definitions), FNS added the definition of Commercial Off-the-Shelf (COTS) products which are beginning to find a place in the Human Services sector. A definition is added to specify FNS' criteria for software to be considered COTS, and clarify where Federal ownership rules do and do not apply to COTS products.

19. Why is a definition for "Enhancement" added?

State agencies often make corrective and adaptive changes in the course of normal maintenance and operations of a system. For extensive renovation or replacement of a system, a State agency would undertake a detailed planning process. Enhancements to a system often fall somewhere in between. By providing a definition of "enhancement" this regulation will help State agencies understand the distinctions, and know when an enhancement may represent a substantial enough change in system functionality to require FNS approval. Guidance presented in FNS Handbook 901, "Advance Planning Documents" as well as this rulemaking clarifies when enhancements may require prior approval via the submission of documentation to FNS.

20. Why would FNS expand the definition of Implementation APD?

The definition would be expanded to delineate the major activities of the System Development Life Cycle (SDLC) that are expected to occur during the Implementation Phase, which the Implementation APD encompasses. These major activities are defined as design, development, testing, and implementation. The intent is to provide clarification to State agencies that the APD process follows that of the SDLC and mirrors State government and industry standards.

21. Why would the APDU definition be revised?

In paragraph 277.18(b) (Definitions), FNS clarifies that the APDU is more than an annual report as the current definition states. The APDU is an annual or as needed report of activities as well as a request for continuation of funding, either at the current or an updated funding amount. The APDU reports the status of activities as well as changes to the project's scope, schedule, budget, cost allocation or procurement strategy. As previously defined, it may have been implied this was simply a report and did not emphasize the importance of this update as a requirement for continuing funding for the project. FNS often approves funding or project approval for a specified period of time during the project. The mechanism to ensure that funding and project approval continues for future development through project completion is the APDU, either annual or as needed, whichever is appropriate for the conditions of a specific project. The phrase "self-certification" was removed as this is not the intent of the APDU.

22. Why is FNS waiving the annual APDU if an As Needed APDU has been submitted?

In paragraph 277.18(c)(3)(i)(C) FNS includes a provision for FNS to waive the annual APDU or reset the APD anniversary date to coincide with the As Needed APDU, if appropriate. Recognizing that many State agencies which submit As Needed APDUs may be duplicating their efforts when submitting annual APDUs, FNS hopes to alleviate this burden by waiving the submission of the Annual APDU until the following year or modifying the Annual APDU due date to be one year from the approval of the As Needed APDU . This is intended to lessen the State reporting burden.

23. Are State agencies required to approve all IS acquisitions no matter how small?

In paragraph 277.18(c)(4) (Approval by the State agency) FNS is revising the language to allow the State agency to delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS. The State agency is free to set its own pre-approval thresholds so long as those thresholds do not exceed the FNS pre-approval thresholds.

24. Why is FNS making changes to the APD content requirements in paragraphs 277.18(c), 277.18(d) and 277.18(e)?

Language on content requirements for an PAPD, Implementation APD (IAPD), Annual APDU and As Needed APDU is being revised to allow FNS to be more responsive to States that are implementing IS and to revise requirements in the future by policy rather than regulation if circumstances warrant. Detailed guidance on the specific content can be found in FNS Handbook 901, "Advanced Planning Documents."

25. Why is FNS making changes to the dollar thresholds for prior approval of IS procurements?

FNS proposes in 277.18(c)(1) and 277.18(c)(2) to align the dollar thresholds for prior approval for IS procurements to the current Department of Health and Human Services (DHHS) requirement of $6 million versus the current FNS requirement of $5 million. Also, FNS proposes to align the dollar thresholds for prior approval of contract amendments to the current DHHS requirement of 20 percent

(cumulatively) of base contract costs. FNS believes creating consistency on these dollar thresholds would simplify the process for State agencies.

26. Why would FNS remove the requirement that a system be used for the lifespan specified in the cost benefit analysis of the Implementation Advance Planning Document?

The requirements for the cost benefits analysis in paragraph 277.18(d)(2)(vii) included a statement indicating the period of time the State agency intended to use the proposed equipment or system. Paragraph 277.18(m) required that systems designed, developed or installed with FFP be used for the period of time specified in the cost benefit analysis. These were determined to be unnecessary and therefore have been removed. These were originally meant to assure that a system was kept in use long enough to reach the "break even" date determined in the cost benefit analysis. However, experience has shown that many facts and assumptions used in that analysis change significantly over the life of the system, likely making the break even date, and therefore the anticipated lifespan inaccurate. Furthermore, State agencies often keep systems in use long past the anticipated lifespan due to budget pressures, and consider system replacement only when driven by technological necessity, such as unsupportable platforms, outdated programming languages, or the excessive cost of maintaining antiquated systems. Finally, the advance planning period and SDLC associated with a large-scale, complex project require that State agencies begin the process of system replacement years before their legacy systems reach the true end of their lifespan and become insupportable.

27. Is FNS changing the requirements for an Emergency Acquisition Request (EAR)?

No, the changes in paragraph 277.18(h) regarding EARs, as in paragraph 277.18(i), only clarify the relationship of emergency acquisition requirements to general acquisition requirements. The existing language might have been interpreted to mean that FNS may recognize the need for a State agency to act quickly, but does not actually approve anything until after the receipt of an approvable IAPD following the emergency action. The revised language is intended to clarify that FNS does provide formal conditional approval of EARs, assuring financial support for up to 90 days, until an approvable IAPD is submitted. If complete documentation is not received within that timeframe, costs may be disallowed.

28. Why is FNS renaming the paragraph currently called "Cost determination and claiming costs"?

In paragraph 277.18(i)(Cost determination and claiming costs), FNS is renaming the paragraph as "General cost requirements" to increase consistency within the section. In the paragraph on Development costs, FNS is inserting a reference to the cost principles set forth in OMB Circular A–87 (2 CFR part 225). This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units). The paragraph on Budget authority, clarifies that an As Needed APDU report, as well as an amended budget, would be required for FNS approval.

29. What is the purpose of adding a discussion of Commercial Off-the-Shelf (COTS) software to the regulation?

In paragraph 277.18(l) (Ownership rights), FNS clarifies that software packages which meet the definition of COTS at paragraph 277.18(b) are not subject to the ownership provisions of this paragraph. Along with long-established licensed COTS products such as operating systems, database software and desktop/office software, FNS recognizes the potential of COTS software in the Human Services sector to provide a proprietary framework and/or tool set which can be used to standardize, simplify and speed the process of building public domain modules, objects or processes within it. The addition of language about COTS products seeks to recognize exceptions to the overarching ownership provisions in the rule. However, a clarification in the language emphasizes that FFP would not be available for COTS products developed specifically for the SNAP program.

30. What is the impact of the language added to Disallowance of FFP?

Current regulatory language at paragraph 277.18 (o) states that FFP in a project can be disallowed for failure to comply with the criteria, requirements, and other undertakings described in the approved or modified APD. The language makes it more consistent with DHHS regulations and allows FNS flexibility in dealing with these occurrences by giving FNS the options of suspending or disallowing a part of the funding.

31. Why is FNS removing Appendix A to Part 277 (Principles for Determining Costs Applicable to Administration of the SNAP by State Agencies)?

FNS is removing Appendix A to Part 277 (Principles for Determining Costs Applicable to Administration of the SNAP by State Agencies) because it is now obsolete and has been replaced by an updated version of OMB Circular A–87 Cost Principals for State, Local, and Indian Tribal Governments as found at 2 CFR 225. As a result of this removal, FNS is also relocating two provisions and updating references to Appendix A in other sections.

FNS is relocating one provision from Appendix A to another section to enhance the information provided in that section. The section to be enhanced includes: paragraph 277.13(b) (nonexpendable personal property) to increase the $1,000 threshold for capital expenditures to $5,000, as currently provided for in Appendix A.

References to Appendix A included in eight other regulatory sections would be changed to refer to OMB Circular A–87 (2 CFR 225). These sections include: 272.1 (159) Amendment (385) which relates to funding; 274.12(k)(2) which relates to costs; 276.4(d) which relates to disallowance; 277.6(b)(6) which relates to costs; 277.9(c)(2) which relates to costs; 277.13(g) which relates to copyrights; 277.16(b)(2) which relates to disallowance; and 277.18(i)(1) which relates to costs. In addition, although § 277.4 does not currently contain a reference to Appendix A, FNS is adding a reference to OMB Circular A–87 (2 CFR 225) as this section relates to funding and allowable costs.

32. Does FNS plan to provide additional guidance for State agencies to assist their implementing this rulemaking?

Yes, FNS plans to update the FNS Handbook 901, "Advance Planning Documents," and provide other training and technical assistance materials, once the final rulemaking is issued. FNS invites suggestions for areas in which guidance would be useful. At this time, the following items have been tentatively identified for further guidance:

- When system enhancements may require prior approval;
- PAPD requirements, including: proposed budget and cost allocation plan;
- IAPD requirements, including: cost benefit analysis, project management plan; resource requirements statement;

cost allocation plan; implementation plan; training plan; and test plan.

List of Subjects in 7 CFR Part 277

Food stamps, Fraud, Government procedure, Grant programs—social programs, Records, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 277 is proposed to be amended as set forth below:

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

1. The authority citation for part 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 277.13:

a. Revise the figure "$1,000" to read "$5,000" wherever it occurs in the following paragraphs:

i. (b)(2)(iii)(A);

ii. (b)(3)(i);

iii. (b)(3)(ii) introductory text;

iv. (c) introductory text; and

v. (e)(3) introductory text; and

b. Revise paragraphs (b)(2)(iii)(A) and (b)(3) to read as follows:

§ 277.13 Property.

* * * * *

(b) * * *

(2) * * *

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than $1,000, the State agency may use the property without reimbursement to FNS.

* * * * *

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than $1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of $1,000 or more per unit, the State agency:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS' share $500 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

3. Revise § 277.18 to read as follows:

§ 277.18 State Systems Advance Planning Document (APD) process.

(a) *Scope and application.* This section establishes conditions for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of Information System(IS) equipment and services used in the administration of the Supplemental Nutrition Assistance Program and as prescribed by appropriate Food and Nutrition Service (FNS) directives and guidance (i.e., FNS Handbook 901, OMB Circulars, etc.).

(b) *Definitions.*

Acquisition means obtaining supplies or services through a purchase or lease, regardless of whether the supplies or services are already in existence or must be developed, created, or evaluated.

Advance Planning Document for project planning or Planning APD (APD or PAPD) means a brief written plan of action that requests FFP to accomplish the planning activities necessary for a State agency to determine the need for, feasibility of, projected costs and benefits of an IS equipment or services acquisition, plan the acquisition of IS equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

Advance Planning Document Update (APDU) means a document submitted annually (Annual APDU) by the State agency to report the status of project activities and expenditures in relation to the approved Planning APD or Implementation APD; or on an as needed (As Needed APDU) basis to request funding approval for project continuation when significant project changes occur or are anticipated.

Commercial Off-the-Shelf (COTS) means proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices in which the software vendor is not positioned as the sole implementer or integrator of the product.

Enhancement means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware. Software enhancements that substantially increase risk or cost or functionality will require submission of an IAPD or an As Needed IAPDU.

Implementation Advance Planning Document or Implementation APD (IAPD) means a written plan of action requesting FFP to acquire and implement information system (IS) services and/or equipment. The Implementation APD includes the design, development, testing, and implementation phases of the project.

Information System (IS) means a combination of hardware and software, data, and telecommunications that performs specific functions to support the State agency, or other Federal, State, or local organization.

Project means a related set of information technology related tasks, undertaken by a State, to improve the efficiency, economy and effectiveness of administration and/or operation of its human services programs. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system, or an upgrade of computer hardware.

Request for Proposal or RFP means the document used for public solicitations of competitive proposals from qualified sources as outlined in § 277.14(g)(3).

(c) *Requirements for FNS prior approval of IS projects.*—(1) *General prior approval requirements.* The State agency shall request prior FNS approval by submitting the Planning APD, the Implementation APD, the draft acquisition instrument, and/or the justification for the sole source acquisition if applicable, as specified in paragraph (c)(2) of this section. A State agency must obtain written approval from FNS to receive federal financial participation of any of the following activities:

(i) When it plans a project to enhance or replace its IS that it anticipates will have total project costs in Federal and State funds of $6 million or more.

(ii) Any IS competitive acquisition that costs more than $6 million in Federal and State funds.

(iii) When the State agency plans to acquire IS equipment or services non-competitively from a nongovernmental

source, and the total State and Federal cost is more than $1 million.

(iv) For the acquisition of IS equipment or services to be utilized in an Electronic Benefit Transfer (EBT) system regardless of the cost of the acquisition in accordance with 7 CFR 274.12 (EBT issuance system approval standards).

(2) *Specific prior approval requirements.* (i) For IS projects which require prior approval, as specified in paragraph (c)(1) of this section, the State agency shall obtain the prior written approval of FNS for:

(A) Conducting planning activities, entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(B) Conducting design, development, testing or implementation activities, entering into contractual agreements or making any other commitment for the acquisition of IS equipment or services.

(ii) For IS equipment and services acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) *Requests for Proposals* (RFPs). Unless specifically exempted by FNS, the State agency shall obtain prior written approval of the RFP before the RFP may be released. However, RFPs for acquisition estimated to cost up to $6 million or competitive procurements from non-governmental sources and which are an integral part of the approved APD, need not receive prior approval from FNS. The State agency shall submit a written request to get prior written approval to acquire IS equipment or services non-competitively from a nongovernmental source when the total State and Federal cost is more than $1 million State agencies shall submit RFPs under this threshold amount on an exception basis. The State agency shall obtain prior written approval from FNS for RFPs which are associated with an EBT system regardless of the cost.

(B) *Contracts.* All contracts must be submitted to FNS. Unless specifically exempted by FNS, the State agency shall obtain prior written approval before the contract may be signed by the State agency. However, contracts for competitive procurements costing up to $6 million and for noncompetitive acquisitions from nongovernmental sources costing up to $1 million and which are an integral part of the approved APD need not be submitted to FNS. State agencies shall submit contracts under this threshold amount on an exception basis. The State agency shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) *Contract amendments.* All contract amendments must be submitted to FNS. Unless specifically exempted by FNS, the State agency shall obtain prior written approval from FNS of any contract amendments which cumulatively exceed 20 percent of the base contract costs before being signed by the State agency. The State agency shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(iii) *Procurement requirements.*—(A) Procurements of IS equipment and services are subject to § 277.14 (procurement standards) regardless of any conditions for prior approval contained in this section, except the requirements of § 277.14(b)(1) and (2) regarding review of proposed contracts. Those procurement standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(B) The standards prescribed by § 277.14, as well as the requirement for prior approval in this paragraph (c), apply to IS services and equipment acquired primarily to support SNAP regardless of the acquiring entity.

(C) The competitive procurement policy prescribed by § 277.14 shall be applicable except for IS services provided by the agency itself, or by other State or local agencies.

(iv) The State agency must obtain prior written approval from FNS, as specified in paragraphs (c)(2)(i) and (ii) of this section, to claim and receive reimbursement for the associated costs of the IS acquisition.

(3) *Document submission requirements.*—(i) For IS projects requiring prior approval as specified in paragraphs (c)(1) and (2)of this section, the State agency shall submit the following documents to FNS for approval:

(A) *Planning APD as described in paragraph (d)(1) of this section.*

(B) *Implementation APD as described in paragraph (d)(2) of this section.*

(C) *Annual APDU as described in paragraph (d)(3) of this section.* The Annual APDU shall be submitted to FNS 60 days prior to the expiration of the FFP approval, unless the submission date is specifically altered by FNS. In years where an As Needed APDU is required, as described in paragraph (c)(3)(i)(D) of this section, FNS may waive or modify the requirement to submit the annual APDU.

(D) *As Needed APDU as described in paragraph (d)(4) of this section.* As Needed APDU are required to obtain a commitment of FFP whenever significant project changes occur. Significant project changes are defined as changes in cost, schedule, scope or strategy which exceed FNS-defined thresholds or triggers. Without such approval, the State agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APDU until such time as approval is specifically granted by FNS.

(E) *Acquisition documents as described in § 277.14(g).*

(F) *Emergency Acquisition Requests as described in paragraph (i) of this section.*

(ii) The State agency must obtain prior FNS approval of the documents specified in paragraph (c)(3)(i) of this section in order to claim and receive reimbursement for the associated costs of the IS acquisition.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents and acquisitions specified in § 277.18 prior to submission for FNS approval. However, the State agency may delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS.

(5) *Prompt action on requests for prior approval.* FNS will reply promptly to State agency requests for prior approval. If FNS has not provided written approval, disapproval or a request for additional information within 60 days of FNS' acknowledgment of receipt of the State agency's request, the request will be deemed to have provisionally met the prior approval requirement in this paragraph (c). However, provisional approval will not exempt a State agency from having to meet all other Federal requirements which pertain to the acquisition of IS equipment and services. Such requirements remain subject to Federal audit and review.

(d) *APD content requirements*—(1) *Planning APD* (PAPD). The PAPD is a written plan of action to acquire proposed services or equipment and to perform necessary activities to investigate the feasibility, system alternatives, requirements and resources needed to replace, modify or upgrade the State agency's IS. The PAPD shall contain adequate documentation to demonstrate the need to undertake a planning process, as well as a thorough description of the proposed planning activities, and estimated costs and

timeline, as specified by FNS in Handbook 901.

(2) *Implementation APD* (IAPD). The IAPD is a written plan of action to acquire the proposed IS services or equipment and to perform necessary activities to design, develop, acquire, install, test, and implement the new IS. The Implementation APD shall contain detailed documentation of planning and preparedness for the proposed project, as enumerated by FNS in Handbook 901, demonstrating the feasibility of the project, thorough analysis of system requirements and design, a rigorous management approach, stewardship of Federal Funds, a realistic schedule and budget, and preliminary plans for key project phases.

(3) *Annual APDU content requirements.* The Annual APDU is a yearly update to ongoing IS projects when planning or implementation activities occur. The Annual APDU shall contain documentation on the project activity status and a description of major tasks, milestones, budget and any changes, as specified by FNS in Handbook 901.

(4) *As Needed APDU content requirements.* The As Needed APDU document shall contain the items as defined in paragraph (c)(3)(i)(D) of this section with emphasis on the area(s) where changes have occurred or are anticipated that triggered the submission of the APDU, as detailed by FNS in Handbook 901.

(e) *Service agreements.* The State agency shall execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. Service Agreement means the document signed by the State or local agency and the State or local central IT facility whenever an IT facility provides IT services to the State or local agency. Service agreements shall:

(1) Identify the IS services that will be provided;

(2) Include a schedule of rates for each identified IS service, and a certification that these rates apply equally to all users;

(3) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(4) Include assurances that services provided will be timely and satisfactory;

(5) Include assurances that information in the IS as well as access, use and disposal of IS data will be safeguarded in accordance with provisions of § 272.1(c) (disclosure) and § 277.13 (property);

(6) Require the provider to obtain prior approval from FNS pursuant to paragraph (c)(1) of this section for IS equipment and IS services that are acquired from commercial sources primarily to support federally aided public assistance programs and require the provider to comply with § 277.14 (procurement standards) for procurements related to the service agreement. IS equipment and services are considered to be primarily acquired to support federally aided public assistance programs when the Programs may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the IS equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of IS equipment or services;

(7) Include the beginning and ending dates of the period of time covered by the service agreement; and

(8) Include a schedule of expected total charges to the Program for the period of the service agreement.

(9) *State Agency Maintenance of Service Agreements.* The State agency will maintain a copy of each service agreement in its files for Federal review upon request.

(f) *Conditions for receiving Federal financial participation* (FFP).—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of IS and information retrieval systems if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food and Nutrition Act of 2008, as amended;

(ii) Meet the Automation of Data Processing/Computerization of Information Systems Model Plan program standards specified in § 272.10(b)(1) through (3) of this chapter, except the requirements in § 272.10(b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) of this chapter to eventually transmit data directly to FNS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with such other systems utilized in the administration of other State agency programs including the program of Temporary Assistance for Needy Families (TANF).

(2) State agencies seeking FFP for the planning, design, development or installation of IS shall develop State wide systems which are integrated with TANF. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the State wide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system used to administer TANF. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(g) *Basis for continued Federal financial participation* (FFP).—(1) FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that IS resources are used for the purposes authorized. FNS will use the APDU to monitor IS project development. The submission of the Update as prescribed in § 277.18(d) for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of IS project development and State and local agency IS operations may be conducted by or for FNS to assure compliance with approved APDs, proper use of IS resources, and the adequacy of State or local agency IS operations.

(2) *Pre-implementation.* The State agency must demonstrate through thorough testing that the system meets all program functional and performance requirements. FNS may require a pre-implementation review of the system to validate system functionality prior to State agency testing.

(i) *Testing.* The State agency must provide a complete test plan prior to the start of the testing phase. The State agency must provide documentation to FNS of the results of performance and User Acceptance Testing (UAT) before the system is piloted in a production environment. FNS concurrence to advance from testing to pilot is a condition for continued FFP. All aspects of program eligibility must be tested to ensure that the system makes accurate eligibility determinations in accordance with federal regulations and approved state policies, and that system functionality meets the required functional specifications. The State agency shall describe how all system testing will be conducted and the resources to be utilized in order to verify the system complies with SNAP requirements, system design specifications, and performance standards including responsiveness,

usability, capacity, and security. Testing includes but is not limited to unit testing, integration testing, performance testing, end-to-end testing, UAT, and regression testing. During UAT detailed scripts covering all areas of program functionality shall be used so that any errors identified can be replicated, corrected, and re-tested.

At a minimum, the Test Plan shall address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities;

(C) Test database generation;

(D) Test case development;

(E) Test schedule;

(F) Documentation of test results;

(G) Acceptance testing shall include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing;

(H) The decision criteria, including specific test results which must be met before the State may exit the testing phase, the roles or titles of the individuals responsible for verifying that these criteria have been met, and the sign-off process which will document that the criteria have been met.

(I) FNS may require any or all of these tests to be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest. FNS reserves the right to participate and conduct independent testing, as necessary, during UAT and at appropriate times during system design, development, implementation, and operations.

(ii) *Pilot.* Prior to statewide rollout of the system there must be a test of the fully operational system in a live production environment. Pilots must operate until a state of routine operation is reached with the full caseload in the pilot area. The design of this pilot shall provide an opportunity to test all components of the system as well as the data conversion process and system performance. The duration of the pilot must be for a sufficient period of time to thoroughly evaluate the system (usually a minimum duration of three months). The State agency must provide documentation to FNS of the pilot evaluation. FNS approval to implement the system more broadly is a condition for continued FFP.

(iii) *Post-implementation Review.* After the system is fully implemented FNS may conduct a review to validate that program policy is correctly applied, whether project goals and objectives were met, that IS equipment and services are being properly used and accurate inventory records exist, and the actual costs of the project.

(h) *Disallowance of Federal financial participation* (FFP). If FNS finds that any acquisition approved under the provisions of § 277.18(c) fails to comply with the criteria, requirements, and other undertakings described in the approved or modified APD, payment of FFP may be suspended or may be disallowed in whole or in part.

(i) *Emergency acquisition requirements.* The State agency may request FFP for the costs of IS equipment and services acquired to meet emergency situations in which:

(1) The State agency can demonstrate to FNS an immediate need to acquire IS equipment or services in order to continue operation of SNAP; and the State agency can clearly document that the need could not have been anticipated or planned for and precludes the State from following the prior approval requirements of paragraph (c) of this section. FNS may provide FFP in emergency situations if the following conditions are met:

(2) The State agency must submit a written request to FNS prior to the acquisition of any IS equipment or services. The written request shall include:

(i) A brief description of the IS equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State agency's need to proceed with the acquisition prior to fulfilling approval requirements at paragraph (c) of this section; and

(iii) A description of the adverse impact which would result if the State agency does not immediately acquire the IS equipment and/or services.

(3) Upon receipt of a written request for emergency acquisition FNS shall provide a written response to the State agency within 14 days. The FNS response shall:

(i) Inform the State agency that the request has been disapproved and the reason for disapproval; or,

(ii) FNS recognizes that an emergency situation exists and grants conditional approval pending receipt of the State agency's formal submission of the IAPD information specified at paragraph (d)(2) of this section within 90 days from the date of the State agency's initial written request.

(iii) If FNS approves the request submitted under paragraph (i)(1) of this section, FFP will be available from the date the State agency acquires the IS equipment and services.

(iv) If the complete IAPD submission required by paragraph (d)(2) of this section is not received by FNS within 90 days from the date of the initial written request, costs may be subject to disallowance.

(j) *General cost requirements.*—(1) *Cost determination.* Actual costs must be determined in compliance with OMB Circular A–87 (2 CFR 225) and an FNS approved budget, and must be reconcilable with the approved FNS funding level. A State agency shall not claim reimbursement for costs charged to any other Federal program or uses of IS systems for purposes not connected with SNAP. The approved APD cost allocation plan includes the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS as part of the request for FNS approval of funding as required in paragraph (d) of this section. Operational costs are to be allocated based on the statewide cost allocation plan rather than the APD cost plan. Approved cost allocation plans for ongoing operational costs shall not apply to IS system development costs under this section unless documentation required under paragraph (c) of this section is submitted to and approvals are obtained from FNS. Any APD-related costs approved by FNS shall be excluded in determining the State agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, in accordance with the cost principles set forth in OMB Circular A–87 (2 CFR 225), the State agency shall specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State agency shall amend the cost allocation plan required by § 277.9 (administrative cost principles) to include the approved APD methodology for the identification, assignment and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an IS shall be identified and assigned by the State agency to funding sources in accordance with the approved cost allocation plan required by § 277.9 (administrative cost principles).

(iii) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A–87 (2 CFR part 225) to identify and assign costs incurred under service agreements with the State agency. The State agency shall then distribute these costs to funding sources in accordance with paragraphs (j)(2)(i) and (ii) of this section.

(3) *Capital expenditures.* The State agency shall charge the costs of IT equipment having unit acquisition costs or total aggregate costs, at the time of acquisition, of more than $25,000 by means of depreciation or use allowance, unless a waiver is specifically granted by FNS. If the equipment acquisition is part of an APD that is subject to the prior approval requirements of paragraph (c)(2) of this section, the State agency may submit the waiver request as part of the APD.

(4) *Claiming costs.* Prior to claiming funding under this section the State agency shall have complied with the requirements for obtaining approval and prior approval of paragraph (c) of this section.

(5) *Budget authority.* FNS approval of requests for funding shall provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FNS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization shall be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FNS approval of an As Needed APD Update as prescribed in paragraphs (c)(3)(i)(D) and (d)(4) of this section, including an amended State budget. Requests to amend the budget authorization approved by FNS shall be submitted to FNS prior to claiming such expenses.

(k) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State agency to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access to all parts of the system may result in suspension and/or termination of SNAP funds for the costs of the system and its operation.

(l) *Ownership rights*—(1) *Software.*—(i) The State or local government shall include a clause in all procurement instruments which provides that the State or local government shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with FFP under this section.

(ii) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(iii) Proprietary operating/vendor software packages which meet the definition of COTS at paragraph 277.18(b) shall not be subject to the ownership provisions in paragraphs (l)(1)(i) and (ii) of this section. FFP is not available for development costs for proprietary application software developed specifically for SNAP.

(2) *Information Systems equipment.* The policies and procedures governing title, use and disposition of property purchased with FFP, which appear at § 277.13 (property) are applicable to IS equipment.

(m) *Information system security requirements and review process*—(1) *Information system security requirements.* State and local agencies are responsible for the security of all IS projects under development, and operational systems involved in the administration of SNAP. State and local agencies shall determine appropriate IS security requirements based on recognized industry standards or compliance with standards governing security of Federal information systems and information processing.

(2) *Information security program.* State agencies shall implement and maintain a comprehensive IS Security Program for IS and installations involved in the administration of the SNAP. IS Security Programs shall include the following components:

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (m)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of IS security:

(A) Physical security of IS resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency IS Security Manager.

(iii) *Periodic risk analyses.* State agencies shall establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses shall be performed whenever significant system changes occur.

(3) *IS security reviews.* State agencies shall review the security of IS involved in the administration of SNAP on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security, operating procedures, and personnel practices. State agencies shall maintain reports of their biennial IS security reviews, together with pertinent supporting documentation, for Federal review upon request.

(4) *Applicability.* The security requirements of this section apply to all IS systems used by State and local governments to administer SNAP.

Dated: August 10, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–20796 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0596; Directorate Identifier 2008–SW–37–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Canada Ltd. Model BO 105 LS A–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Eurocopter Canada

Ltd. Model BO 105 LS A–3 helicopters. That AD currently requires establishing a life limit for certain tension-torsion (TT) straps. This action would require reducing the "number of flights" life limit and providing a time-in-service (TIS) life limit for those TT straps. This proposal is prompted by a recalculation by the manufacturer and subsequent changes to the service information related to the retirement time of the TT strap initially adopted as a result of an accident in which a main rotor blade (blade) separated from a Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The same part-numbered TT strap is used on Model BO 105 LS A–3 helicopters. The actions specified by the proposed AD are intended to prevent fatigue failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com*.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

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 caption **ADDRESSES**. Include the "Docket No. FAA–2011–0596; Directorate Identifier 2008–SW–37–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the 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 with FAA personnel concerning this proposed rulemaking. Using the search function of the docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On September 5, 2000, we issued superseding AD 2000–18–13, Amendment 39–11899 (65 FR 55452, September 14, 2000), to establish a life limit for TT strap, part number (P/N) 2604067 (Bendix) or P/N J17322–1 (Lord), of 120 months or 40,000 flights, whichever occurs first. That action was prompted by an accident in July 1999 in which a blade separated from a Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The same part-numbered TT strap is also used on the Eurocopter Canada Ltd. Model BO 105 LS A–3 helicopters. The requirements of that AD are intended to prevent failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

Since issuing that AD, the manufacturer has recalculated the retirement time, provided a time-in-service (TIS) limit, and issued revised service information related to the life limit of the TT strap.

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD No. CF–2008–17R1, dated May 26, 2008, to correct an unsafe condition for the Eurocopter Canada Ltd. (formerly MBB Canada Ltd.) Model BO 105–LS–A3 helicopters. Transport Canada advises that "the tension-torsion strap (TTS) failure on a MBB BK 117 helicopter in July 1999, initiated a TTS service life recalculation. This recalculation changed the retirement time in Chapter 4 of Maintenance Manual. As a result of this change, the TTS in service are to be replaced or inspected as a precautionary measure, pending already accumulated service hours and the calendar time since their last installation."

Since the issuance of the Transport Canada AD, the type certificate for this helicopter model has been transferred to the Federal Republic of Germany. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Federal Republic of Germany, has adopted Transport Canada AD No. CF–2008–17R1, dated May 26, 2008, and requires compliance with that AD.

Related Service Information

Eurocopter Canada Limited issued Alert Service Bulletin No. ASB–BO 105 LS–10–10, Revision 1, dated January 8, 2008 (ASB). The ASB describes procedures for determining the total accumulated installation time and factoring the number of flights on each TT strap. The ASB also describes and contains a graph for determining the revised life limit, and provides various compliance intervals, inspection provisions, and replacement criteria for the TT strap. The previously described ASB specifies procedures for determining the total accumulated installation time and number of flights on TT strap, P/N 2604067 (Bendix) or P/N J17322–1 (Lord). The ASB also describes establishing a revised life limit for the TT strap of 120 months, 25,000 flights, or 3,800 hours, whichever occurs first. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2008–17R1, dated May 26, 2008, to ensure the continued airworthiness of these helicopters. EASA, the Technical Agent for the current type certificate holder, the Federal Republic of Germany, has adopted and requires compliance with Transport Canada AD No. CF–2008–17R1, dated May 26, 2008.

FAA's Evaluation and Unsafe Condition Determination

This helicopter has been approved by the aviation authority of the Federal Republic of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with

the Federal Republic of Germany, EASA, their technical representative, has notified us of the unsafe condition described in the Transport Canada AD, which has been adopted by EASA. We are proposing this AD because we evaluated all information provided by EASA and Transport Canada and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design. This proposed AD would require establishing a revised life limit for TT strap, P/N 2604067 (Bendix) or P/N J17322–1 (Lord), of 120 months, 25,000 flights, or 3,800 hours time-in-service (TIS), whichever occurs first.

Differences Between This Proposed AD and the Transport Canada AD

Our AD differs from the Transport Canada AD as follows:

- The Transport Canada AD uses the terms "air time hours" and "flight hours" to describe compliance times, and this proposed AD uses the term "hours time-in-service".
- The Transport Canada AD requires inspections for tension-torsion straps that have an accumulated installation time of 10 or more years, and our AD does not require these inspections.
- The Transport Canada AD requires verifying and establishing a new service life for the tension-torsion straps within the next 25 hours TIS, and this AD requires this to be done before further flight.

Costs of Compliance

We estimate that this proposed AD would affect 13 helicopters of U.S. registry and the proposed actions would take about 15 work hours per helicopter to accomplish at an average labor rate of $85 per work hour. Required parts would cost about $13,867 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $196,846 to replace all the affected TT straps in the entire fleet.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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. Section 39.13 is amended by removing Amendment 39–11899 (65 FR 55452; September 14, 2000), and adding the following new airworthiness directive (AD):

EUROCOPTER CANADA LTD.: Docket No. FAA–2011–0596; Directorate Identifier 2008–SW–37–AD. Supersedes AD 2000–18–13; Amendment 39–11899; Docket No. 99–SW–68–AD.

Applicability: Model BO 105 LS A–3 helicopters, with tension-torsion (TT) strap, part number (P/N) 2604067 (Bendix) or J17322–1 (Lord), installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter accomplish the following:

(a) Before further flight:

(1) Create a component log card or equivalent record for each TT strap.

(2) Review the history of each helicopter and TT strap. Determine the age since initial installation on any helicopter (age) and the number of flights on each affected TT strap. Enter the age, hours time-in-service (TIS), and the number of flights for each TT strap on the component log card or equivalent record. When the number of flights is unknown, multiply the number of hours TIS by 5 to determine the number of flights. If a TT strap has been previously used at any time on Model BO–105LS A–3 'SUPER LIFTER", BO–105 CB–5, BO–105 CBS–5, BO–105 DBS–5, or any MBB–BK 117 series helicopter, multiply the total number of flights accumulated on those other models by a factor of 1.6 and then add that result to the number of flights accumulated on the helicopters affected by this AD.

(3) Remove any TT strap from service if the total hours TIS or number of flights and age cannot be determined.

(b) Remove any TT strap, P/N 2604067 (Bendix) or P/N J17322–1 (Lord), that has been in service for 120 months since initial installation on any helicopter, or has accumulated 25,000 flights (a flight is a takeoff and a landing), or has been in service for 3,800 hours TIS.

(c) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a revised life limit for the TT strap, P/N 2604067 (Bendix) or P/N J17322–1 (Lord), of 120 months, 25,000 flights, or 3,800 hours TIS, whichever occurs first.

Note 1: Eurocopter Canada Limited Alert Service Bulletin No. ASB–BO 105 LS–10–19, Revision 1, dated January 8, 2008, which is not incorporated by reference, contains additional information about the subject of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(e) The Joint Aircraft System/Component (JASC) Code is 6200: Main Rotor System.

Note 2: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2008–17R1, dated May 26, 2008. The European Aviation Safety Agency, which is the Technical Agent for the current type certificate holder, the Federal Republic of

Germany, has adopted and requires compliance with the Transport Canada AD.

Issued in Fort Worth, Texas, on June 3, 2011.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–21472 Filed 8–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Class C Airspace for Long Beach, CA; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others, concerning a proposal to establish Class C airspace at Long Beach, CA. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on October 25 and 26, 2011. Meetings will run from 6 p.m. until 9 p.m. Comments must be received on or before December 12, 2011.

ADDRESSES: The meetings will be held at the Holiday Inn Long Beach Airport, 2640 N. Lakewood Blvd., Long Beach, CA 90815, 562–597–4401.

Comments: Send comments on the proposal, in triplicate, to: John Warner, Operations Support Group, AJV–W2, Western Service Area, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Pat Anderson (838) 537–5847 or Rick Pfahler, (858) 537–5830, FAA Support Managers, Southern California TRACON, 9175 Kearny Villa Road, San Diego, CA 92126:

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) Doors open 30 minutes prior to the beginning of each meeting. The meetings will be informal in nature and will be conducted by one or more representatives of the FAA Western Service Area. A representative from the FAA will present a briefing on the proposed establishment of Class C airspace at Long Beach, CA. Each participant will be given an opportunity to deliver comments or make a presentation, although a time limit may be imposed. Only comments concerning the proposal to establish Long Beach Class C airspace will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of comments made at the meetings will be filed in the docket.

Agenda for the Meetings

—Sign-in.

—Presentation of meeting procedures.

—FAA briefing on the proposed establishment of the Class C Airspace Area.

—Solicitation of public comments.

—Closing comments.

Issued in Washington, DC, on August 16, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–21424 Filed 8–22–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 239, 700, 701, 702 and 703

Request for Comment Concerning Interpretations of the Magnuson-Moss Warranty Act; Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing Informal Dispute Settlement Procedures; and Guides for the Advertising of Warranties and Guarantees

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: As part of its systematic review of all Federal Trade Commission ("AFTC" or "Commission") rules and guides, the FTC seeks public comment on a set of warranty-related Interpretations, Rules and Guides: its Interpretations of the Magnuson-Moss Warranty Act ("Interpretations" or "Rule 700"); its Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions ("Rule 701"); its Rule Governing Pre-Sale Availability of Written Warranty Terms ("Rule 702"); its Rule Governing Informal Dispute Settlement Procedures ("Rule 703"); and its Guides for the Advertising of Warranties and Guarantees ("Guides"). The Commission requests public comment on the overall costs, benefits, necessity and regulatory and economic impact of these Interpretations, Rules and Guides.

DATES: Written comments must be received on or before October 24, 2011.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment portion of the **SUPPLEMENTARY INFORMATION** section below. Write "Magnuson-Moss Warranty Act Rule Review, 16 CFR Part 700, P114406," on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/warrantyrulesanprm* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Svetlana S. Gans, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, H–286, 600 Pennsylvania

Avenue, NW., Washington, DC 20580, (202) 326–3708.

SUPPLEMENTARY INFORMATION:

I. Background

A. 16 CFR 700: Interpretations of the Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act ("Act"), 15 U.S.C. 2301–2312, which governs written warranties on consumer products, was signed into law on January 4, 1975. After the Act was passed, the Commission received many questions concerning the Act's requirements. In responding to these inquiries, the Commission initially published, on June 18, 1975, a policy statement in the **Federal Register** (40 FR 25721) providing interim guidance during the initial implementation of the Act. As the Commission continued to receive questions and requests for advisory opinions, however, it determined that more comprehensive guidance was appropriate. Therefore, on July 13, 1977, the Commission published in the **Federal Register** (42 FR 36112) its Interpretations of the Magnuson-Moss Warranty Act to assist warrantors and suppliers of consumer products in complying with the Act.

These Interpretations are intended to clarify the Act's requirements for manufacturers, importers, distributors and retailers. The Interpretations provide explanation on a number of topics, including guidance on whether a particular product would be considered a "consumer product" under the Act; permissible uses of warranty registration cards under the Act; illegal tying arrangements under Section 2302(c) of the Act [1]; and service contracts.[2] These Interpretations, like industry guides, are administrative interpretations of the law. Therefore, they do not have the force of law and are not independently enforceable. The Commission may take action under the FTC Act, however, if a business makes claims inconsistent with the Interpretations. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5 of the FTC Act.

B. 16 CFR 701: Disclosure of Written Consumer Product Warranty Terms and Conditions

Section 2302(b)(1)(A) of the Act authorizes the Commission to promulgate rules regarding the disclosure of written warranty terms. Accordingly, on December 31, 1975, the Commission published in the **Federal Register** (40 FR 60188) its Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions. Rule 701 establishes disclosure requirements for written warranties on consumer products that cost more than $15.00 (40 FR 60171–60172). It also specifies the aspects of warranty coverage that must be disclosed in written warranties, as well as the exact language that must be used for certain disclosures regarding state law on the duration of implied warranties and the availability of consequential or incidental damages. Under Rule 701, warranty information must be disclosed in simple, easily understandable, and concise language in a single document. In promulgating Rule 701, the Commission determined that certain material facts about product warranties must be disclosed because failure to do so would be deceptive or misleading. In addition to specifying the information that must appear in a written warranty, Rule 701 also requires that, if the warrantor uses a warranty registration or owner registration card, the warranty must disclose whether return of the registration card is a condition precedent to warranty coverage.

C. 16 CFR Part 702: Pre-Sale Availability of Written Warranty Terms

Section 2302(b)(1)(A) of the Act directs the Commission to promulgate rules requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser prior to the sale of the product. Accordingly, on December 31, 1975, the Commission published Rule 702. In promulgating Rule 702, the Commission determined that the availability of warranty information prior to sale is an important tool for consumers in making a purchasing decision either about the product itself or about buying a service contract for the product. The Rule was amended on March 12, 1987 (52 FR 7569). Among other things, Rule 702 now requires sellers to make warranties readily available either by (1) Displaying the warranty document in close proximity to the product or (2) furnishing the warranty document on request and posting signs in prominent locations advising consumers that warranties are available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements, and also sets out the methods by which warranty information can be made available prior to the sale if the product is sold through catalogs, mail order or door-to-door sales. Though discussed in staff guidelines, Rule 702 currently does not set out the methods by which warranty information can be made available for products sold over the Internet.

D. 16 CFR Part 703: Informal Dispute Settlement Procedures

Section 2310(a)(2) of the Act directs the Commission to prescribe the minimum standards for any informal dispute settlement mechanism ("IDSM") that a warrantor, by including a "prior resort" clause in its written warranty, requires consumers to use before they may file suit under the Act to obtain a remedy for warranty non-performance. Accordingly, on December 31, 1975, the Commission published Rule 703. Rule 703 contains extensive procedural safeguards for consumers that an IDSM must incorporate if a warrantor requires consumers seeking warranty redress to use it. These standards include, but are not limited to, requirements concerning the IDSM's structure (*e.g.*, funding, staffing and neutrality), the qualifications of staff or decision makers, the IDSM's procedures for resolving disputes, recordkeeping and annual audits.

As noted, Rule 703 comes into play only if the warranty includes a "prior

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[1] Section 2302(c) prohibits warrantors from employing "tying" arrangements—*i.e.*, conditioning a written warranty's coverage on the consumer's using, in connection with the warranted product, an article or service identified by brand, trade, or corporate name (unless the warrantor provides that article or service to the consumer without charge). The interpretations contained in Section 700.10 explain that "[n]o warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance." 16 CFR 700.10. Section 700.10 further provides that a warrantor is prohibited from denying liability where the warrantor cannot demonstrate that the defect or damage was caused by the use of unauthorized articles or services. *Id.*

[2] The Act specifies that "[t]he term 'service contract' means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product." 15 U.S.C. 2301(8). Although a service contract is similar to a written warranty, § 700.11 distinguishes a service contract from a warranty on the basis that a warranty must be "part of the basis of the bargain [to purchase a consumer product]." 16 CFR 700.11(a). In other words, to be a warranty, it "must be conveyed at the time of sale of the consumer product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement." *Id.* By contrast, a service contract is not part of the basis of the bargain—it is often sold separately and for consideration additional to the price of the product itself. "An agreement which would meet the [Act's] definition of written warranty * * * but for its failure to satisfy the basis of the bargain test is a service contract." 16 CFR 700.11(c). The interpretations, however, do not set forth the specific manner in which service contract terms and conditions should be disclosed.

resort requirement." Though few warrantors have such a requirement, many state lemon laws, paralleling Section 2310(a)(3) of the Act, prohibit the consumer from pursuing any state lemon law rights in court unless the consumer first seeks a resolution of the claim through an available IDSM. A threshold question for many state lemon lawsuits is whether the IDSM complies with Rule 703 and thus whether the consumer must use the specified IDSM or may proceed directly to a court action. Thus, in effect, these states incorporate Rule 703 into their lemon laws.

E. 16 CFR Part 239: Guides for the Advertising of Warranties and Guarantees

The Commission first adopted its Guides Against Deceptive Advertising of Guarantees (later re-designated as the "Guides for the Advertising of Warranties and Guarantees") on April 26, 1960 "for the use of its staff in evaluation of the advertising of guarantees" (32 FR 15541). The Guides were subsequently published in the **Federal Register** on November 8, 1967, and were codified at 16 CFR part 239. The Guides were revised in 1985 to harmonize them with the Act's requirements (50 FR 18470, May 1, 1985 and 50 FR 20899, May 21, 1985). They were again reviewed in 1996.

The Guides recommend that advertisements mentioning warranties or guarantees should contain a disclosure that the actual warranty document is available for consumers to read before they buy the advertised product. In addition, the Guides set forth advice for using the terms "satisfaction guarantees," "lifetime" and similar representations. Finally, the Guides state that sellers or manufacturers should not advertise that a product is warranted or guaranteed unless they promptly and fully perform their warranty obligations. As mentioned previously, these Guides do not have the force of law and are not independently enforceable, however, the Commission may take action under the FTC Act, if a business makes claims inconsistent with the Guides, and the act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

II. Regulatory Review

The Commission reviews its rules and guides periodically. These reviews seek information about the costs and benefits of the rules and guides as well as their regulatory and economic impact. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the Interpretations, Rules and the Guides; their benefits to consumers; and their burdens on firms subject to their requirements.

III. Request for Comment

The Commission invites comment on the Interpretations, Rules 701, 702, 703 and the Guides. In addition, the Commission requests responses to the following general and specific questions.

A. General Questions for Comment

1. Is there a continuing need for specific provisions of the Interpretations, Rules and Guides? Why or why not?

2. What benefits and costs have the Interpretations, Rules and Guides had on businesses or firms that are subject to their requirements?

(a) What changes, if any, should be made to the Interpretations, Rules and Guides to minimize any burden or cost imposed on businesses or firms subject to their requirements?

(b) What evidence supports these proposed changes?

(c) How would these changes affect consumers and businesses, including small businesses?

3. What benefits and costs have the Interpretations, Rules and Guides had on consumers who purchase the warranted products affected by the Act?

(a) What changes, if any, should be made to the Interpretations, Rules and Guides to increase the benefits to consumers?

(b) What evidence supports these proposed changes?

(c) How would these changes affect consumers and businesses, including small businesses?

4. Do the Interpretations, Rules and Guides overlap or conflict with other federal, state, or local laws or regulations? What evidence supports these asserted conflicts? Should the Interpretations, Rules or Guides be changed in light of these asserted conflicts? If so, how?

5. Provide any evidence concerning the degree of industry compliance with the Interpretations, Rules and Guides. Does this evidence indicate the Interpretations, Rules or Guides should be modified? If so, why and how? If not, why not?

6. Have changes in technology, including but not limited to, the Internet and mobile technology, or economic conditions affected the need or purpose for the Interpretations, Rules and Guides? Should the Interpretations, Rules or Guides be changed because of these developments? If so, how?

7. What are the effects, if any, of the Interpretations, Rules and Guides on the costs, profitability, competitiveness and employment of small business entities?

B. Specific Questions for Comment

1. Should Rule 700.10, specifically, its interpretation of the Act's tying prohibition contained in Section 2302(c), be revised to improve the effectiveness of the prohibition? Why or why not? What changes, if any, should be considered? What evidence supports these changes?

2. Should the Interpretations, Rules or Guides be amended to address service contracts? Why or why not? What changes, if any, should be considered? What evidence supports these changes?

3. Should Rule 702 be amended to specifically address making warranty documents accessible via online commerce? Why or why not? What changes, if any, should be considered? What evidence supports these changes?

4. Should the informal dispute settlement mechanism requirements of Rule 703 be changed? Why or why not? What changes, if any, should be made? What evidence supports these changes?

IV. Instructions for Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 24, 2011. Write "Magnuson-Moss Warranty Act Rule Review, 16 CFR part 700, P114406." on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individual' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include

any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged, or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/warrantyrulesanprm*, by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write "Magnuson-Moss Warranty Act Rule Review, 16 CFR part 700, P114406," on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 24, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2011–21527 Filed 8–22–11; 8:45 am]

BILLING CODE 6750–01–P

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG–2011–0231]

RIN 1625–AA01

Anchorage Regulations; Wells, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish three special anchorage areas in Wells Harbor, Wells, Maine. This proposed action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels not more than 20 meters in length. This action is intended to increase the safety of life and property in Wells Harbor, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must be received by the Coast Guard on or before October 7, 2011. Requests for public meetings must be received by the Coast Guard on or before September 13, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0231 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. John J. Mauro, Waterways Management Branch, First Coast Guard District; telephone 617–223–8355, e-mail *John.J.Mauro@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0231), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0231" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed

postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0231" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for one on or before September 13, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

The rule is intended to reduce the risk of vessel collisions by creating three special anchorage areas in Wells Harbor. This proposed rule would establish special anchorage areas in the western, central and eastern portions of Wells Harbor creating anchorage for approximately 150 vessels.

Discussion of Proposed Rule

The proposed rule would create three new special anchorage areas in Wells, Maine. These three new special anchorage areas in Wells Harbor are described below. All proposed coordinates are North American Datum 1983 (NAD 83).

Anchorage A

All of the waters enclosed by a line beginning at latitude 43°19′15.7″ N, longitude 070°33′42.1″ W; thence to latitude 43°19′15.7″ N, longitude 070°33′40.3″ W; thence to latitude 43°19′2.6″ N, longitude 070°33′45.7″ W; thence to latitude 43°19′3.7″ N, longitude 70°33′42.6″ W; thence to the point of beginning. This area is approximately 5,800 sq. yards, encompassing the central portion of Wells Harbor.

Anchorage B

All of the waters enclosed by a line beginning at latitude 43°19′11.1″ N, longitude 070°33′49.8″ W; thence to latitude 43°19′10.5″ N, longitude 070°33′47.3″ W; thence to latitude 43°19′8.7″ N, longitude 070°33′50.6″ W; thence to latitude 43°19′8.3″ N, longitude 070°33′47.3″ W; thence to the point of beginning. This area is approximately 25,000 sq. yards, encompassing the western portion of Wells Harbor.

Anchorage C

All of the waters enclosed by a line beginning at latitude 43°19′17.7″ N, longitude 070°33′34.0″ W; thence to latitude 43°19′18.4″ N, longitude 070°33′32.9″ W; thence to latitude 43°19′13.0″ N, longitude 070°33′26.2″ W; thence to latitude 43°19′13.8″ N, longitude 070°33′25.5″ W; thence to the point of beginning. This area is approximately 8,200 sq. yards, encompassing the eastern portion of Wells Harbor.

Vessels not more than 20 meters in length are not required to sound signals as per Rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) nor exhibit anchor lights or shapes as per Rule 30 of the Inland Navigation Rules (33 U.S.C. 2030) when at anchor in a special anchorage area. Additionally, mariners utilizing the anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

Regulatory Analyses

We developed this proposed 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 proposed 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.

We expect minimal additional cost impacts on fishing, or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Wells and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of recreational and small fishing vessels intending to anchor in Wells Harbor.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Wells and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. John J. Mauro, Waterways Management Branch, First Coast Guard District; telephone 617–223–8355, e-mail *John.J.Mauro@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. We believe the proposed rule would be categorically excluded, under figure 2–1, paragraph (34)(f) of the Instruction because it involves the establishment of special anchorage grounds. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A preliminary environmental analysis checklist is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Add § 110.9 to subpart A to read as follows:

§ 110.9 Wells Harbor, Maine.

(a) *Anchorage "A"*. All of the waters enclosed by a line beginning at latitude 43°19′15.7″ N, longitude 070°′33″42.1'' W; thence to latitude 43°19′15.7″ N, longitude 070°33′40.3″ W; thence to latitude 43°19′2.6″ N, longitude 070°33′45.7″ W; thence to latitude 43°19′3.7″ N, longitude 70°33′42.6″ W; thence to the point of beginning. This area is approximately 5,800 sq. yards,

encompassing the central portion of Wells Harbor.

(b) *Anchorage "B".* All of the waters enclosed by a line beginning at latitude 43°19′11.1″ N, longitude 070°33′49.8″ W; thence to latitude 43°19′10.5″ N, longitude 070°33′47.3″ W; thence to latitude 43°19′8.7″ N, longitude 070°33′50.6″ W; thence to latitude 43°19′8.3″ N, longitude 070°33′47.3″ W; thence to the point of beginning. This area is approximately 25,000 sq. yards, encompassing the western portion of Wells Harbor.

(c) *Anchorage "C".* All of the waters enclosed by a line beginning at latitude 43°19′17.7″ N, longitude 070°33′34.0″ W; thence to latitude 43°19′18.4″ N, longitude 070°33′32.9″ W; thence to latitude 43°19′13.0″ N, longitude 070°33′26.2″ W; thence to latitude 43°19′13.8″ N, longitude 070°33′25.5″ W; thence to the point of beginning. This area is approximately 8,200 sq. yards, encompassing the eastern portion of Wells Harbor.

(d) *Regulations:* This area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors or moorings in place are allowed in this area. Fixed mooring piles or stakes are not allowed. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

Note: All anchoring in the areas is under the supervision of the Wells Harbor Master or other such authority as may be designated by the authorities of the Town of Wells, Maine. All coordinates referenced use datum: NAD 83.

Dated: Aug. 9, 2011.

Daniel A. Neptun,

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

[FR Doc. 2011–21335 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0591]

RIN 1625–AA09

Drawbridge Operation Regulation; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the CSX Railroad Vertical Lift Bridge across the Anacostia River, mile 3.4 at Washington, DC. The proposed change will alter the eight hour advance notice requirement for a bridge opening to a 48 hour advance notice requirement for a bridge opening. The operating regulation change will give more notice for trains and vessels to adjust their schedules accordingly to ensure safe and efficient transits across and through the bridge.

DATES: Comments and related material must reach the Coast Guard on or before December 21, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0591 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0591), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG–2011–0591" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0591" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the

individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The CSX Railroad Company has requested a change in the operating regulation for the CSX Railroad Vertical Lift Bridge, across the Anacostia River, mile 3.4, at Washington, DC. The change will replace the current eight hour advance notice requirement for a bridge opening to a 48 hour advance notice requirement for a bridge opening. The bridge is part of a rail line that is used for regular passenger service and there are 21 train transits a day across this bridge. Therefore, it is necessary that ample time is given to maintain an accurate schedule for trains and vessels for a safe and efficient travel across and through the bridge.

The current operating schedule for the bridge is set out in 33 CFR 117.253(b). The regulation was established in August 2004 and allows the bridge to be operated from a remote location, the Benning Yard office. The draw of the bridge shall open on signal at all times for public vessels of the United States, state and local government vessels, commercial vessels and any vessels in an emergency involving danger to life or property; between 9 a.m. and 12 p.m., and between 1 p.m. and 6 p.m. from May 15 through September 30; and between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the controller no later than 6 p.m. on the day for which the opening is requested. At all other times the bridge will open if at least 8 hours notice is given.

The vertical clearance of the bridge is 5 feet at Mean High Water in the closed position and 29 feet at Mean High Water in the open position. There are 21 train transits across this bridge every day. There have been two bridge openings in the past two years for vessels taller than five feet.

We are testing the potential operating regulation adjustment for 180 days in conjunction with this notice of proposed rulemaking to discover any impacts on train transit or water navigation as a result of the adjustment. During the test deviation period a bridge opening count has been requested from the CSX Railroad Company.

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.253(b) for the CSX Railroad Bridge, mile 3.4 at Washington, DC. Paragraph (b)(1)(iv) would change to state the following: At all other times, if at least 48 hours notice is given to the controller at the Benning Yard Office. The remainder of paragraph (1) and paragraphs (2) through (6) would remain the same as currently published.

Vessels that are able to pass through the bridge in the closed position may do so at any time. There are no alternate routes for vessels that cannot pass through the bridge in the closed position. The Coast Guard will inform waterway users through the Local and Broadcast Notices to Mariners.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The proposed change is expected to have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled advance notice requirement for a bridge opening to minimize delay.

Small Entities

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

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

This proposed 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 October 1 and May 14 at all times and those needing to transit between the hours of 7 p.m. and 9 a.m. and from 12 p.m. to 1 p.m. between May 15 and September 30.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: the rule adds minimal restrictions to the movement of waterway navigation by requiring vessels that are not essential public vessels, vessels with dangerous emergencies, or vessels transiting through the bridge at specified excluded times to give 48 hours of notice when requesting a bridge opening. Vessels that can safely transit under the bridge in the closed position may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lindsey Middleton, Bridge Management Specialist, Fifth Coast Guard District, (757) 398–6629 or *Lindsey.R.Middleton@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Revise § 117.253(b)(1) to read as follows:

§ 117.253 Anacostia River.

* * * * *

(b)(1) * * *

(iv) At all other times, if at least 48 hours of notice is given to the controller at the Benning Yard Office.

* * * * *

Dated: July 22, 2011.

William D. Lee,

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

[FR Doc. 2011–21457 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0675, FRL–9455–7]

Approval and Promulgation of Implementation Plans; State of Kansas Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Kansas on November 9, 2009, that addresses Regional Haze for the first implementation period. In so doing, EPA is proposing to determine that the plan submitted by Kansas satisfies the requirements of the Clean Air Act (CAA or Act), for states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is taking this action pursuant to those provisions of the CAA that obligate the Agency to take action on submittals of SIPs. You may submit written comments on this proposed rule as per the instructions given under the section Instructions for Comment Submittal.

DATES: Written comments must be received via the methods given in the Instructions for Comment section on or before September 22, 2011.

ADDRESSES: *Instructions for Comment Submittal:* Submit your comments, which must be identified by Docket ID No. EPA–R07–OAR–2011–0675, by one of the following methods:

1. *Federal eRulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: Wolfersberger.Chris@epa.gov.*

3. *Fax:* (913) 551–7844 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

4. *Mail:* Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery:* U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; attention: Chrissy Wolfersberger. Such deliveries are only accepted Monday through Friday, from 8 a.m. to 5 p.m. excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7 Office, 901 N. 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 5 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101 or by telephone at (913) 551–7864.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional Haze is visibility impairment that is produced by a multitude of sources and activities which are located across a wide 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.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. $PM_{2.5}$ can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication.[1]

[1] Eutrophication is defined as excessive richness of nutrients in a lake or other body of water.

Continued

Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments", or 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 in many Class I areas (*e.g.*, national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the Western United States is 100–150 kilometers (13.6–9.6 deciviews (dv))[2][3], or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers (25 dv or more), or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule

In section 169A of the 1977 Amendments CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas[4] which impairment results from manmade air pollution." On December 2, 1980, EPA 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" (45 FR 80084). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze 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 Regional Haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713) (Regional Haze Rule or Rule). The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the Federal visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized below in section II. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States are required by 40 CFR 51.308(b) to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles Agencies in Addressing Regional Haze

Successful implementation of the Regional Haze 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 effectively address 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 air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. 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 and other pollutants leading to regional haze. The State of Kansas participated in the planning efforts of the Central Regional Air Planning Association (CENRAP) which is affiliated with the Central States Air Resource Agencies (CENSARA). This RPO includes nine states—Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana.

States were also required (40 CFR 51.308(i)) to coordinate with FLMs during the development of the state's strategies to address Regional Haze. FLMs include the US Fish and Wildlife Service, the U.S. Forest Service, and the National Park Service.

II. What are the requirements for regional haze SIPs?

A. CAA Provisions and the Regional Haze Rule

CAA sections 110(l) and 110(a)(2) require revisions to a SIP to be adopted by a state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR Part 51, subpart F. These requirements include publication of notices by prominent advertisement in the relevant geographic area of a public hearing on proposed revisions, at least a 30-day public comment period, and the opportunity for a public hearing, and that the state, in accordance with its laws, submit the revision to the EPA for approval. Specific information on Kansas' rulemaking, Regional Haze SIP development and public information process is included in Chapter 2, and Appendix 2.1, of the State of Kansas Regional Haze SIP, which is included in the docket of this proposed rulemaking.

Regional Haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. Section 169A, and EPA's implementing regulations (40 CFR 51.300–51.309), require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans also must give specific attention to certain stationary

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frequently due to runoff from the land, which causes a dense growth of plant life and death of animal life from lack of oxygen.

[2] Visibility refers to the clarity with which distant objects can be viewed. Visual range is the distance at which an object is just discernible from the background. This could be considered how far one can see in a given direction. Visual range is primarily affected by the scattering and absorption of light by particles in the atmosphere. Scattering by gaseous molecules also reduces the transmission of light. The diminished intensity of light caused by this scattering and absorption is called light extinction.

[3] Deciview means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired.

[4] Areas designated as mandatory Class I Federal areas are those 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. 42 U.S.C. 7472(a). Section 169A of the CAA requires EPA to promulgate a list of such areas where visibility is an important value. 42 U.S.C. 7491. In 1979, EPA identified visibility as an important value in 156 of these areas. 44 FR 69122 (November 30, 1979); see 40 CFR part 81, subpart D. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although States and tribes may designate additional areas as Class I, the requirements of the visibility program under 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), the Secretary of the department with authority over such lands. 42 U.S.C. 7602(i). When we use the term "Class I area" in this notice, we mean a "mandatory Class I Federal area."

sources that were in existence on August 7, 1977 but were not in operation before August 7, 1962 and require, where appropriate, that these sources install BART for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Consultation With States and Federal Land Managers (FLMs)

The Regional Haze Rule requires that states consult with other states and 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 reasonable progress goals (RPGs)[5] 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.

C. Determination of Baseline, Natural and Current Visibility Conditions

The Regional Haze Rule establishes the deciview as the principle metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[6]

The deciview is used in expressing reasonable progress goals (which are interim visibility goals toward meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The Regional Haze SIPs must contain measures that make "reasonable progress" toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, *i.e.*, anthropogenic 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, 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 Regional Haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the Regional Haze Rule 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 develop an estimate of natural visibility conditions for 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. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as "EPA's 2003 Natural Visibility Guidance"), and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003, located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as "EPA's 2003 Tracking Progress Guidance").

For the first regional haze SIPs that were due by December 17, 2007, "baseline visibility conditions" were the starting point 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 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.

D. Monitoring Strategy and Other Implementation Plan Requirements

40 CFR 51.308(d)(4) of the Regional Haze Rule includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Vital Environments (IMPROVE) network, *i.e.* review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years.

The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether reasonable progress goals 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 regional haze visibility impairment at Class I areas both within and outside the state;
- For a state with no mandatory Class I areas, procedures for using monitoring data and other information to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;

[5] 40 CFR 51.308(d)(1)—for each mandatory Class I area located within the State, the State must establish goals (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility conditions.

[6] The preamble to the Regional Haze Rule provides additional details about the deciview. See 64 FR 35714, 35725 (July 1, 1999).

- 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, the most recent year for which data are available, and estimates of future projected emissions, along with a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The Regional Haze Rule 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 BART applies only to the first Regional Haze 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 be continue to be met.

E. Reasonable Progress Goals

The vehicle for ensuring continuing progress toward achieving the national visibility goal is the submission of a series of regional haze SIPs that establish two reasonable progress goals (*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. The Regional Haze Rule 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 reasonable progress goals, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing reasonable progress goals, but are required to consider the following factors established in section 169A of the CAA and in EPA's Regional Haze Rule 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 reasonable progress goal for the best and worst days for each applicable Class I area in the state (40 CFR 51.308(d)(1)(i)(A)). States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program*, ("EPA's Reasonable Progress Guidance"), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the reasonable progress goals, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the "uniform rate of progress" or the "glidepath") and the emission reduction measures needed to achieve that rate of progress over the ten year period of the SIP. Uniform progress toward achievement of natural visibility conditions by 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 reasonable progress goals, 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 (51.308(d)(1)(iv)).

States without Class I areas are required to submit Regional Haze SIPs to address their contribution to visibility impairment. As per the previous discussion in this proposed rulemaking, the ability of the long range transport of pollutants to affect visibility conditions areas makes it imperative that each state evaluate how emissions from within its borders affect visibility impairment in Class I areas in other states. However, states without Class I areas, such as Kansas, are not required to (a) establish reasonable progress goals, (b) calculate baseline and natural visibility conditions at Class I areas, or (c) monitor and report visibility data for each Class I area within the state.

F. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires that certain categories of existing stationary sources built between 1962 and 1977 procure, install, and operate the "best available retrofit technology" as determined by the state.[7] Under the Regional Haze Rule, 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 toward improving visibility than BART. This is discussed in more detail in section III. of this proposal.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule*[8] at Appendix Y to 40 CFR part 51 (hereinafter referred to as the "BART Guidelines") to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emissions limits for each applicable source. In making a BART determination for a fossil fuel-fired 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

[7] The set of "major stationary sources" potentially subject to BART are listed in CAA section 169A(g)(7). The 26 source categories are: (1) Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, (2) Coal cleaning plants (thermal dryers), (3) Kraft pulp mills, (4) Portland cement plants, (5) Primary zinc smelters, (6) Iron and steel mill plants, (7) Primary aluminum ore reduction plants, (8) Primary copper smelters, (9) Municipal incinerators capable of charging more than 250 tons of refuse per day, (10) Hydrofluoric, sulfuric, and nitric acid plants, (11) Petroleum refineries, (12) Lime plants, (13) Phosphate rock processing plants, (14) Coke oven batteries, (15) Sulfur recovery plants, (16) Carbon black plants (furnace process), (17) Primary lead smelters, (18) Fuel conversion plants, (19) Sintering plants, (20) Secondary metal production facilities, (21) Chemical process plants, (22) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input, (23) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, (24) Taconite ore processing facilities, (25) Glass fiber processing plants, and (26) Charcoal production facilities.

[8] Appendix Y to part 51—F.1. The guidelines provide a process for making BART determinations that states can use in implementing the regional haze BART requirements on a source-by-source basis, as provided in 40 CFR 51.308(e)(1). States must follow the guidelines in making BART determinations on a source-by-source basis for 750 megawatt (MW) power plants but are not required to use the process in the guidelines when making BART determinations for other types of sources.

encouraged, but not required to follow the BART Guidelines in making BART determinations for other types of sources.

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. EPA has stated that states should use their best judgment in determining whether VOCs 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 emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. As a general matter, any exemption threshold set by the state should not be higher than 0.5 deciviews (70 FR 39161).

In their SIPs, states must identify potential BART sources, described as "BART-eligible sources" in the Regional Haze Rule and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following five 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.

A Regional Haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, controls must be installed and in operation as expeditiously as practicable, but no later than 5 years after EPA's approval of the regional haze SIP. See CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the Regional Haze Rule, 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.

As noted above, the Regional Haze Rule 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. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97 need not require affected BART-eligible electricity generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). Since CAIR is not applicable to emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

G. Long Term Strategy (LTS)

Consistent with the requirement in section 169A of the CAA that states include in their regional haze SIP a 10- to 15-year strategy for making reasonable progress, 40 CFR 51.308(d)(3) of the Regional Haze Rule requires that states include a LTS in their 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 reasonable progress goals. 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. See 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to impairment in a Class I area located in another state, the Regional Haze Rule requires the impacted state to coordinate with the contributing states in order to develop coordinated emission management strategies (40 CFR 51.308(d)(3)(i)). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the reasonable progress goal 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 are taken into account in developing their LTS (40 CFR 51.308(d)(3)(v)):

- Emission reductions due to ongoing air pollution control programs,
- Measures to mitigate the impacts of construction activities;
- Emissions limitations and schedules for compliance to achieve the reasonable progress goal;
- Source retirement and replacement schedules;
- Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes;
- Enforceability of emissions limitations and control measures; and
- The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS.

III. What is the relationship of the Clean Air Interstate Rule (CAIR) to the regional haze requirements?

A. Overview of EPA's CAIR

CAIR, as originally promulgated, requires 28 states and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contribute to, or interfere with maintenance of, the NAAQS for fine particulates and/or ozone in any downwind state. See 70 FR 25162 (May 12, 2005). CAIR establishes emission budgets or caps for SO_2 and NO_X for states that contribute significantly to nonattainment in downwind states and requires the significantly contributing states to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X-annual, and NO_X-ozone season emissions.

B. Remand of the CAIR

On July 11, 2008, the DC Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. See *North Carolina* v. *EPA*, 531 F.3d 836 (DC Cir. 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without

vacating either CAIR or the CAIR FIPs. The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA could replace it with a rule consistent with the court's opinion. 550 F.3d at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action. Because CAIR accordingly has been remanded to the Agency without vacatur, CAIR and the CAIR FIPs are currently in effect in subject states.

Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, as allowed under the BART provisions at 40 CFR 51.308(e)(4). Additionally, several states established RPGs that reflect the improvement in visibility expected to result from controls planned for or already installed on sources within the state to meet the CAIR provisions for this implementation period for specified pollutants. Many states relied upon their own CAIR SIPs or the CAIR FIPs for their states to provide the legal requirements which leads to these planned controls, and did not include enforceable measures in the LTS in the regional haze SIP submission to ensure these reductions. States also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for this implementation period.

On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule (CSAPR).[9] This rule responds to the court ruling remanding the 2005 CAIR, and achieves emission reductions beyond those originally required by CAIR through additional air pollution reductions from power plants beginning in 2012. On July 11, 2011, in conjunction with EPA's finalization of CSAPR, EPA issued a supplemental proposal requesting comment on inclusion of additional states in the CSAPR ozone season program. (76 FR 40662) EPA intends to finalize the supplemental proposal by October 31, 2011.

C. CAIR in Relation to the State of Kansas' Submittal

The State of Kansas is not in the CAIR program and did not rely on CAIR for reductions of SO_2 or NO_X in place of BART at its BART-subject EGUs. EPA acknowledges that the CAIR program was a major component in the underlying assumptions used by the State to determine source apportionment based on the modeled reduction expected in neighboring states that participate in the CAIR program. Modeling used by the CENRAP states included assumptions based on reductions from CENRAP states that relied on CAIR. As more fully discussed in section IV. F. of this proposal, and page 30 of the SIP, the State committed to report on its progress towards meeting the reasonable progress goals established for the Class I areas in other states within five years of submittal of the SIP, and if the State determines that the implementation plan is inadequate to ensure the reasonable progress goals are met, to submit necessary revisions to EPA. Kansas has committed to review emissions changes and potential new technology developments that may apply to the sources identified above as part of the five-year progress report. As described on page 74 of the SIP, if a determination is made that controls are feasible, cost-effective, and needed for visibility improvements, the State will explore additional controls at that time.

IV. What is EPA's analysis of the State of Kansas' submittal?

A. CAA Provisions and the Regional Haze Rule

EPA is proposing to find that that the State of Kansas has met the requirements of the CAA which require that the State adopt a SIP after reasonable notice and public hearing. EPA also believes that the State has met the requirements of the specific procedural requirements for SIP revisions promulgated at 40 CFR part 51, subpart F and appendix V. These requirements include publication of notices by prominent advertisement in the relevant geographic area of a public hearing on proposed revisions, at least a 30-day public comment period, and the opportunity for a public hearing, and that the State, in accordance with its laws, submit the revision to EPA for approval. Specific information on Kansas' rulemaking, Regional Haze SIP development and public information process is included in Chapter 2, and Appendix 2.1, of the State of Kansas Regional Haze SIP, which is included in the docket of this proposed rule making.

B. Affected Class I Areas

EPA is proposing to find that the State of Kansas has adequately established which Class I areas are impacted by emissions from the State, as required by 40 CFR 51.308(d) and as described in the Agency's "Visibility Monitoring Guidance" [10] . There are no Class I areas hosted by the State of Kansas. States, such as Kansas, that do not host Class I areas are not required to identify reasonable progress goals or calculate baseline and natural visibility conditions at Class I areas. However, states without Class I areas are still required to submit SIPs that address the apportionment of visibility impact from the emissions generated by sources within the state's borders at Class I areas hosted by other states. The following are the Class I areas nearest to the State of Kansas in all directions around the State's border:

- Caney Creek Wilderness Area, Arkansas (CACR)
- Upper Buffalo Wilderness Area, Arkansas (UPBU)
- Great Sands Dunes Wilderness Area, Colorado (GRSA)
- Rocky Mountain National Park, Colorado (ROMO)
- Hercules Glades Wilderness Area, Missouri (HEGL)
- Mingo Wilderness Area, Missouri (MING)
- Wichita Mountains Wilderness Area, Oklahoma (WIMO)
- Badlands National Park, South Dakota (BADL)
- Wind Cave National Park, Texas (WICA)
- Big Bend National Park, Texas (BIBE)
- Guadalupe Mountains National Park, Texas (GUMO)

The 20 percent worst day estimated percent light extinction (for the base year 2002 and projection year 2018), at these eleven Class I areas, attributed to emissions from sources in Kansas (shown by pollutant species and source category), are provided in the Technical Support Document (TSD) to this proposed rulemaking. The CENRAP computed these data using IMPROVE data for 2000 to 2004 to define baseline, natural and 2018 conditions for each of the affected Class I areas. All CENRAP states relied upon the regional modeling work performed by CENRAP [11] (and its contractors) for determining the impact that sources within a state might have on Class I areas in the region. The modeling was based on PM Source Apportionment Technology (PSAT) with the Comprehensive Air Quality Model with extensions (CAMx) photochemical model. For Kansas, the CENRAP modeling indicated that Kansas sources were most likely to have

[9] 76 FR 48208, August 8, 2011.

[10] Visibility Monitoring Guidance: *http://www.epa.gov/ttn/amtic/files/ambient/visible/r-99-003.pdf.*

[11] A contractor to CENRAP, ENVIRON, completed the data analysis. This analysis can be reviewed in Chapter 4 of the Technical Support Document developed by ENVIRON and can be found at *http://www.kdheks.gov/bar/index.html.*

the highest visibility impact at the WIMO.

EPA is proposing to find that the State of Kansas adequately identified the Class I areas impacted by sources of air pollution within the State and the State adequately determined the apportionment of those pollutants from sources located within the State and as such has met the requirements of 40 CFR 51.308(d)(3)(iii).

C. Consultation With States and FLMs

EPA is proposing to find that that the State of Kansas participated in sufficient consultation with other states where emissions from sources in Kansas are reasonably anticipated to cause or contribute to visibility impairment in Class I areas hosted by other states and to coordinate emission management strategies for such Class I areas, as required by 40 CFR 51.308(d)(1)(iv) and (d)(3)(i). The State of Kansas was an active member of the CENRAP. The governing body (voting members) of CENRAP was considered the Policy Oversight Group (POG). The POG was made up of 18 voting members representing states and tribes in the CENRAP region and nonvoting member representing local air agencies, the FLMs and other stakeholders. CENRAP members also developed a workgroup structure to address technical and non-technical issues related to regional haze. There were five workgroups: Monitoring; Emissions Inventory; Modeling; Communications; and Implementation and Control Strategies. Any interested party to CENRAP was invited to participate on any or all of the workgroups. Policy issues were decided by the POG. The Kansas Regional Haze SIP was developed utilizing data analysis, modeling results and other technical support documents prepared for CENRAP members by the workgroups, or parties contracted by CENRAP.[12] The Kansas SIP (at page 85) indicates that in addition to participation in the regional planning process, Kansas consulted directly with the States of Missouri, Texas, Oklahoma and Arkansas to determine if controls beyond presumptive BART (presumptive BART is discussed in greater detail below) would be required of emission sources in Kansas.

EPA is proposing to find that the State of Kansas engaged in adequate consultation with the FLMs as required by 40 CFR 51.308(i). The State provided the FLMs with state contacts for submission of recommendations in accordance with 40 CFR 51.308(i)(1), as provided on page 14 of the Kansas Regional Haze SIP. In addition to the FLMs having the opportunity to participate in or comment on (as non-voting members of CENRAP) the development of technical and non-technical documents used by the State to develop its Regional Haze SIP, the FLMs were given the opportunity to comment on the State's draft SIP dated November 1, 2007 as required by 40 CFR 51.308(i)(2), participate in a public hearing held on August 20, 2008, the opportunity to comment on a revised draft SIP dated July 16, 2009, and participate in a second public hearing held on August 27, 2009. The FLMs submitted comments to the State of Kansas on December 14, 2007. The State addressed comments received from the FLMs as shown in Appendix 4.1 of the State's Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). To address the requirement for continuing consultation with the FLMs under 40 CFR 51.308(i)(4), the State of Kansas has committed in its SIP to ongoing consultation with the FLMs on Regional Haze issues throughout the implementation period by coordinating and consulting with the FLMs during development of five-year progress reports and plan revisions.

EPA is proposing to find the State of Kansas provided sufficient evidence that it engaged in adequate consultation with other states and the FLMs and therefore has met the requirements of 40 CFR 51.308(i) and (d)(3)(i) and of the Regional Haze Rule.

D. Determination of Baseline, Natural and Current Visibility Conditions

States that host Class I areas are required to estimate the baseline, natural and current visibility conditions of those Class I areas. As Kansas does not host a Class I area, it is not required to estimate these metrics. However, as previously discussed in section IV. B. of this document, the State must still develop a SIP that estimates the apportionment of visibility impact related to pollutant emissions from sources within the State on Class I areas hosted by other States.

E. Monitoring Strategy and Other Implementation Plan Requirements

As it does not host a Class I area, Kansas is not required to develop a monitoring strategy for measuring, characterizing, and reporting regional haze impairment that is representative of Class I areas within the State. However, Kansas is required to establish procedures by which monitoring data and other information is used to determine the contribution of emissions from within the State to regional haze impairment at Class I areas outside of the State and to document the technical basis on which it is relying to determine its apportionment of emission reductions necessary for achieving reasonable progress in each Class I area it affects, as required by 40 CFR 51.308(d)(3)(iii), (d)(4)(ii) and (iii). Kansas is also required to develop a statewide emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, as required by 40 CFR 51.308(d)(3)(iii) and (d)(4)(v). This inventory must include baseline year emissions, emissions for the most recent year that data is available, and estimates of future year emissions. A commitment to update the inventory as well as a commitment to maintain reporting, recording keeping and other measures necessary to assess and report on visibility improvements are required by 40 CFR 51.308(d)(4)(v) and (vi). EPA is proposing to find that the State has met these requirements, as explained below.

1. Monitoring Strategy

There are three IMPROVE protocol sites (sites that are not managed directly by IMPROVE (a Federal program) but by the operating agency) which are operated in the State of Kansas. One is located at Cedar Bluff State Park in Trego County in the western part of the State, a second at the Tallgrass Prairie National Preserve in the eastern part of the State (each operated by the State of Kansas), and the third is located in Reserve, Kansas in the northeastern part of the State and it is operated by the Sac and Fox Nation of Missouri in Kansas and Nebraska. Descriptions of these monitoring sites and methods for data validation can be found in Chapter 6 of the State's Regional Haze SIP. The State has provided a commitment in Chapter 6, section 6.3, of the State's Regional Haze SIP to maintain the three IMPROVE protocol monitoring sites, or any other EPA approved network configuration, contingent upon continued national funding.

The filter samples from the three IMPROVE-protocol sites are sent for analysis to the Crocker Nuclear Laboratory at the University of California in Davis, and the resultant data are subjected to preliminary review and quality assurance/quality control (QA/QC) procedures. Nephelometer data from the Cedar Bluff site are validated by the CENRAP contractor. Other visibility-related data collected by the State of Kansas ($PM_{2.5}$, SO_2, NO_2, and NH_3) are subjected to review and QA/QC procedures prior to reporting.

[12] This information was provided on the CENRAP Web site, *http://cenrap.org or CENRAP's FTP site.*

After validation, data from the three IMPROVE-protocol sites are sent by the Crocker Nuclear Laboratory at the University of California in Davis for posting to the IMPROVE Web site and the Visibility Information Exchange Web System (VIEWS) Web site *http://vista.cira.colostate.edu/views/*. Nephelometer data from the Cedar Bluff site are reported to the VIEWS database by the CENRAP contractor. Other visibility-related data collected by the State of Kansas are reported to EPA's Air Quality System (AQS) database on a quarterly basis.

EPA is proposing to find that the State's commitment to provide and utilize data from these sites, or any other EPA approved monitoring network location, to characterize and monitor model conditions within the State and to compare visibility conditions in the State to visibility impairment at Class I areas hosted by other states meets the requirements of 40 CFR 51.308(d)(4)(ii) and (iii) of the Regional Haze Rule.

2. Emissions Inventory

EPA has reviewed the emissions inventory provided by the State of Kansas and believes that it is sufficient and follows the guidance provided by the Agency in its "Emissions Inventory Guidance for the Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations" [13] and its "2002 Base Year Emissions Inventory SIP Planning: 8-hour Ozone, $PM_{2.5}$ and Regional Haze Programs" memo.[14] Kansas is required to develop a statewide emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. This inventory must include baseline year emissions, emissions for the most recent year that data is available, and estimates of future year emissions. The State provided an inventory of emissions of pollutants that may reasonably be anticipated to cause or contribute to visibility impairment in any Class I area: VOCs, NO_X, SO_2, $PM_{2.5}$, PM_{10} and NH_3. As required, the inventory includes emissions for a baseline year (2002), the most recent year for which data are available, and estimates of future year (2018) projected emissions along with a commitment to update the inventory periodically.

The 2002 emissions inventory and its improvements were developed by CENRAP and its contractors as part of the development of a baseline inventory for the 2002 modeling inventory.[15] The TSD to this proposal discusses the improvements to the inventory that were prepared by the contractor retained to develop and improve three inventory categories of the baseline 2002 inventory: planned burning, ammonia, mobile source and fugitive dust. The complete 2002 baseline emissions inventory can be found in Appendix 7.1 of the SIP. Methodologies for the development of the 2002 emissions inventories can be found in Appendix 7.3 of the SIP.

To estimate the 2018 future year emissions the State grew the 2002 emissions using the Economic Growth Analysis System (EGAS), MOBILE 6.2 vehicle emissions software, and the Integrated Planning Model (IPM) version 2.93 for EGUs.

EPA is proposing to find that the 2002 and 2018 statewide emissions inventories and the State's method for developing the 2018 emissions inventory meets the requirements of 40 CFR 51.308(d)(4)(v) of the Regional Haze Rule.

TABLE 1—2002 KANSAS EMISSIONS SUMMARY, BY SOURCE CATEGORY AND POLLUTANT

Source category	Tons/yr					
	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	40,278	165,224	16,321	38,366	59,750	143,367
Nonpoint (except fires)	87,327	13,851	10,024	10,533	796	3,100
On-road mobile	74,519	100,152	1,607	2,179	2,816	3,097
Nonroad mobile	28,138	82,697	5,993	6,549	115	8,101
Nonpoint fire	35,046	29,322	117,597	129,187	19	11,051
Biogenic	575,073	49,616	N/A	N/A	N/A	N/A
Totals	840,381	440,862	151,542	186,814	63,496	168,716

TABLE 2—2018 KANSAS PROJECTED EMISSIONS SUMMARY, BY SOURCE CATEGORY AND POLLUTANT

Source category	Tons/yr					
	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	54,007	145,647	23,669	50,165	71,623	81,664
Nonpoint (except fires)	104,983	15,822	9,143	9,534	1,247	3,860
On-road mobile	32,724	28,779	655	655	3,892	369
Nonroad mobile	15,156	38,044	2,696	2,954	52	120
Nonpoint fire	35,046	29,322	117,597	129,187	19	11,051
Biogenic	575,073	49,616	N/A	N/A	N/A	N/A
Totals	816,989	307,230	153,760	192,495	76,833	97,070

[13] Emissions Inventory Guidance for the Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations: *http://www.epa.gov/ttn/chief/eidocs/eiguid/eiguidfinal_nov2005.pdf.*

[14] 2002 Base Year Emissions Inventory SIP Planning: 8-hour Ozone, $PM_{2.5}$ and Regional Haze Programs memo-*http://www.epa.gov/ttnchie1/eidocs/2002baseinven_102502new.pdf.*

[15] *http://www.cenrap.org/html/projects.php.*

3. Reporting Requirements

EPA has reviewed and believes the State's reporting strategy meets the requirements of the Regional Haze Rule. The State is required to maintain reporting, recordkeeping and other measures necessary to assess and report on visibility improvements. In its Regional Haze SIP, Kansas asserts that by complying with EPA's Air Emissions Reporting Rule, in addition to the State's commitment (as given in Chapter 7, section 7.7, of the State's Regional Haze SIP) to periodically update the emissions inventory through use of the latest available emissions data (expected to be the 2011 National Emissions Inventory, source inventory data such as Continuous Emissions Monitoring Systems (CEMS) data for EGUs, or EGAS growth rates for other sources in comparison to actual emissions) when completing the State's mandatory five-year progress reports, it has met the requirement of the Rule. EPA is proposing to find that the State's methods of reporting and recordkeeping of emissions meets the requirement of 40 CFR 51.308(d)(4)(v) and (vi) of the Regional Haze Rule.

4. SIP Revision Schedule

Section 51.308(f) of the Regional Haze Rule requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies and the SIP, as appropriate, by July 31, 2018, and every ten years thereafter. EPA is proposing to find that the State of Kansas met this requirement by committing to reassess and revise the Regional Haze SIP on this schedule, as necessary, in Chapter 7, section 7.7 of the SIP. In addition, the State committed to submit its five-year SIP report by November 9, 2014, and along with the five-year report, submit a determination of the adequacy of its existing Regional Haze SIP revisions. EPA is proposing to find that the State's commitment to meet these schedules meets the requirements of 40 CFR 51.308(f), (g), and (h) of the Regional Haze Rule.

F. Determination of Reasonable Progress Goals

Since the State of Kansas does not host Class I areas, it is not required to establish RPGs for a Class I area. However, as discussed in sections IV.B. and IV.D. of this proposed rulemaking, the State must still develop a SIP that estimates the apportionment of visibility impact, related to pollutant emissions from sources within the State of Kansas, on Class I areas hosted by other states. As discussed in section IV.G. of this proposal the State is required to develop a control strategy to reduce those impacts.[16] A discussion of the State's control strategy to reduce visibility impacts at Class I areas around the State is included in section IV.H. of this proposal.

G. Best Available Retrofit Technology

EPA has reviewed and proposes that the State's process to identify BART-eligible sources, BART-subject sources and the emission rates it has determined to be BART for five BART-subject units at three sources in Kansas meets the requirements of the Regional Haze Rule at 40 CFR 51.308(e) and is consistent with the *Guidelines for BART Determinations under the Regional Haze Rule*. The TSD to this proposal provides a detailed analysis of the State's BART determinations.

As previously mentioned in this proposal, on July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the "BART Guidelines") to assist states in determining which of their sources should be subject to the BART requirements and determining appropriate emissions limits for each BART-subject source. The BART evaluation process consists of three components: (a) Identification of all the BART-eligible sources; (b) assessment of whether the BART-eligible sources are subject to BART; and (c) determination of the BART controls. The components, as addressed by the State's findings, are discussed below, and further discussed in the TSD for this proposed rulemaking.

In making a BART determination for a fossil fuel-fired generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is not required to follow the BART Guidelines in making BART determinations for other types of sources. The BART Guidelines provide five steps toward identifying BART control for these very large EGUs. Step 1: Identify all available retrofit control technologies; Step 2: Eliminate technically infeasible control technologies; Step 3: Evaluate the control effectiveness of remaining control technologies; Step 4: Evaluate impacts and document the results; Step 5: Evaluate visibility impact.

1. BART Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the State's boundaries. The State utilized the methodology in the BART Guidelines and EPA's regulations at 40 CFR 51.301, for determining which sources were BART-eligible. For an emission source to be identified as BART-eligible, the State used these criteria from the BART Guidelines:

- One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines;
- The emission unit was in existence on August 7, 1977 and began operation at some point on or after August 7, 1962; and
- The limited potential emissions from all emission units identified in the previous two bullets were 250 tons or more per year of any of these visibility-impairing pollutants: SO_2, NO_X, or PM_{10}.

In the BART determination process, states must address all significant visibility impairing pollutants. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. As indicated by the BART Guidelines, a state should use its best judgment in determining whether VOCs, ammonia or ammonia compounds impair visibility in particular Class I areas. Kansas determined that it did not need to evaluate VOC or ammonia emissions as part of its BART analyses.[17] The TSD to this proposal includes EPA's analysis and confirmation of the state's conclusion that neither VOC nor ammonia needed to be evaluated as part of the State's BART determinations.

[16] 40 CFR 51.308(d)(3)(ii)—Where other States cause or contribute to impairment of visibility in a mandatory Class 1 Federal area, the State must demonstrate that it has included in its implementation plan all measures necessary to obtain reductions needed to meet the progress goal for the area.

[17] Appendix Y of Part 51—States should exercise judgment in deciding whether the following pollutants impair visibility in an area: (4) VOCs and (5) Ammonia and ammonia compounds. A State should use its best judgment in deciding whether VOC or ammonia emissions from a source are likely to have an impact on visibility in an area. Certain types of VOC emissions, for example, are more likely to form secondary organic aerosols than others. Similarly, controlling ammonia emissions in some areas may not have a significant impact on visibility. A State need not provide a formal showing of an individual decision that a source of VOC or ammonia emissions is not subject to BART review. Because air quality modeling may not be feasible for individual sources of VOC or ammonia, a state should also exercise its judgment in assessing the degree of visibility impacts due to emissions of VOC and emissions of ammonia or ammonia compounds. A state should fully document the basis for judging that a VOC or ammonia source merits BART review, including its assessment of the source's contribution to visibility impairment.

EPA is proposing to find that the State's use of air quality data provided by CENRAP, in evaluating whether potential BART sources could be reasonably expected to cause or contribute to visibility impairment in a Class I area is in accordance with the BART guidelines and in accordance with 40 CFR 51.308(e)(1)(ii).

To identify the sources that met the criteria above, Kansas performed a multi-step search and analysis including a database query of the permitted air sources in its point source emissions inventory database, and a more detailed survey of the limited number of facilities in the database that met the source category criteria. This process is outlined in detail in Appendix 9.1 of the SIP and is discussed in the TSD to this proposal. The nineteen facilities identified are listed in Table 3.

TABLE 3—FACILITIES WITH BART-ELIGIBLE UNITS IN THE STATE OF KANSAS

BART Source category name	Facility ID	Facility name	BART-Eligible emission units
Fossil-Fuel Fired Electric Generating Units.	0090002	Aquila (now Sunflower Electric)—Arthur Mullergren.	Unit 3 (Stacks 1 and 2).
	1750001	Aquila (now Sunflower Electric)—Cimarron River.	Unit 1.
	0570001	Aquila (now Sunflower Electric)—Judson Large.	Unit 4.
	2090008	Kansas City BPU—Nearman.	Unit 1.
	2090048	Kansas City BPU—Quindaro.	Unit 1 Unit 2.
	1070005	KCP&L—La Cygne	Unit 1 Unit 2.
	1130014	McPherson Municipal Power Plan #2.	Unit 1.
	0550026	Sunflower Electric—Garden City.	Unit S2.
	1730012	Westar Energy—Gordon Evans.	Unit 2 (Stacks 2 and 3).
	1550033	Westar Energy—Hutchinson.	Unit 4 (Stacks A and B).
	1490001	Westar Energy—Jeffrey	Unit 1 Unit 2.
	0450014	Westar Energy—Lawrence.	Unit 5.
	0350012	Winfield Municipal Power Plant #2.	Unit 4.
Portland Cement Plants	0010009	Monarch Cement Co	No. 4 Kiln Stack, No. 4 Kiln Clinker Cooler, No. 5 Kiln Stack, No. 5 Kiln Clinker Cooler, Raw Material Unloading, Clinker Grinding and Cement Handling, Stone Quarry Processing.
Petroleum Refineries	0150004	Frontier El Dorado Refining Co.	Boiler B–105, Boiler B–107, Plant Process Heaters, Refinery Flare System B–1303, Plant Cooling Towers, Storage Tanks, Gas Oil Hydrotreater.
	1130003	National Cooperative Refinery Assoc. (NCRA).	Alky Heater HA–002, No. 9 Boiler SB–009, No.12 Boiler SB–012, Coker IR Comp. CR–003, Plat Stab Boil Htr HP–003, Plat Charge Htr HP–006, Fugitive Emissions.
Chemical Processing Plants.	1730070	Basic Chemicals (now OxyChem—Wichita).	Boiler 1; Boiler 2; Boiler 3; Chloromethanes.
	0570003	Koch Nitrogen	Ammonia plant—primary reformer; Ammonia plant—other; Nitric acid plant—absorber tail gas; Ammonium nitrate plant—neutralizer.
Glass Fiber Processing Plants.	2090010	Owens Corning	70 furnace—N exhaust; 70 furnace—S exhaust; 70 riser/channel/forehearth; 70 A forming; 70 B forming; 70 C forming; 70 D forming; 70 curing oven charge end; 70 curing oven discharge end; J5 furnace; J5 riser/channel/forehearth; J6 A forming; J6 B forming; J6 C forming; J6 curing oven charge end; J6 curing oven discharge end; J6 smoke stripper; J6 north cooling (A); J6 south cooling (B); J6 asphalt coating; Raw material processing.

EPA is proposing to find that the State of Kansas appropriately identified its BART-eligible sources in accordance with 40 CFR 51.308(e)(1)(i) of the Regional Haze Rule and the BART Guidelines.

2. BART Subject Sources

The second phase 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, and using air quality data provided by CENRAP, Kansas

completed a modeling analysis of all nineteen sources determined to be BART-eligible, using CALPUFF.[18] The BART guidelines indicate that CALPUFF, or other appropriate models, can be used to determine if an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas.

To assess contribution to visibility impairment at a Class I area, the states must establish a contribution threshold. The BART Guidelines state that a single source that is responsible for a 1.0 dv change or more should be considered to 'cause' visibility impairment at a Class I area and that a source that is responsible for a 0.5 dv change should be considered to 'contribute' to visibility impairment at a Class I area. The Guidelines state that a lower threshold can be chosen under certain circumstances (*e.g.*, many contributing emission sources close to a Class I area).

As set forth in Appendix 9.2 of the SIP, the State utilized a contribution threshold of 0.5 dv. The State selected this contribution threshold in accordance with the BART Guidelines, section III.A.1., based upon the relatively large distances between the State's BART-eligible sources, and the Class I areas outside the State. Use of the screening threshold of 0.5 dv is further justified because the visibility impacts of sources excluded at this screening stage of the analysis are well below 0.5 dv. If the modeling results showed that a source had at least a 0.5 dv or greater visibility impact on at least one day in a three year period (2001–2003), then further BART-subject analysis was required. The nine Class I areas that were determined to be significant for determining impacts from potential BART-subject sources were:

- Caney Creek Wilderness Area, Arkansas (CACR)
- Upper Buffalo Wilderness Area, Arkansas (UPBU)
- Great Sand Dunes Wilderness Area, Colorado (GRSA)
- Rocky Mountain National Park, Colorado (ROMO)
- Hercules-Glades Wilderness Area, Missouri (HEGL)
- Mingo Wilderness Area, Missouri (MING)
- Wichita Mountains Wilderness Area, Oklahoma (WIMO)
- Badlands National Park, South Dakota (BADL)
- Wind Cave National Park, South Dakota (WICA)

This preliminary modeling was completed using general assumptions made by the State. The modeling showed that eight of the nineteen BART-eligible sources exceeded the contribution screening threshold of 0.5 dv or greater visibility impact on at least one day in a three year period. Those sources are identified in Table 4.

TABLE 4—KANSAS BART-ELIGIBLE EMISSION UNITS WITH AT LEAST ONE > 0.5 DV VISIBILITY IMPACT DAY ON SELECTED CLASS I AREAS DURING 2001–2003

Source	Number of days during 2001–2003 with visibility impact > 0.5 dv								
	CACR	UPBU	GRSA	ROMO	HEGL	MING	WIMO	BADL	WICA
Kansas City BPU—Nearman Unit 1	23	21	3	1	30	16	15	3	2
Kansas City BPU—Quindaro Units 1 & 2	13	13	1	1	18	6	9	0	0
KCP&L—La Cygne Units 1 & 2	204	249	17	21	278	233	142	46	38
Monarch Cement Kilns 4 & 5	0	0	0	0	0	0	1	0	0
Westar Energy—Gordon Evans Unit 2	33	30	11	13	28	17	102	32	24
Westar Energy—Hutchinson Unit 4	14	7	6	5	6	3	17	9	4
Westar Energy—Jeffrey Units 1 & 2	150	161	27	28	182	158	165	82	55
Westar Energy—Lawrence Unit 5	14	14	1	1	17	7	9	2	1

The State required each of those eight sources to submit refined modeling for further review. The refined modeling analysis for each source is given in Appendix 9.8 of the State's Regional Haze SIP and was used by the State to assess each of the eight sources' potential visibility impacts in more accurate detail (*e.g.* revised emission rates, stack parameters, etc., as provided by each source). Based on the refined modeling results, the State determined that five units at three sources were BART-subject and required BART determinations as outlined in CAA section 169A(g)(2) for each of those units. Those five units are given below:

- Unit 1 at Kansas City Power and Light, La Cygne, Facility ID 1070005
- Unit 2 at Kansas City Power and Light, La Cygne, Facility ID 1070005
- Unit 1 at Westar Energy, Jeffrey Energy Center, Facility ID 1490001
- Unit 2 at Westar Energy, Jeffrey Energy Center, Facility ID 1490001
- Unit 2 at Westar Energy, Gordon Evans Energy Center, Facility ID 1730012

After review of the State's method for determining BART-subject sources and the refined analysis of those sources, the EPA is proposing to find that the State appropriately identified all of the units in the State that are BART-subject in accordance with 40 CFR 51.308(e)(1)(ii) the Regional Haze Rule and the BART Guidelines.

3. BART Determinations

In making BART determinations, CAA section 169A(g)(2) and 40 CFR 51.308(e)(1)(ii)(A) require 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. This five step analysis is commonly referred to as a "five factor analysis".

As discussed in the TSD to this notice, Kansas found the most significant visibility impairment attributable to the units identified as subject to BART is dominated by contributions from NO_X and SO_2 emissions. PM visibility impairment attribution from these units is not significant. Because visibility

[18] CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion model that simulates the effects of time- and space-varying meteorological conditions on pollution transport, transformation and removal. CALPUFF can be applied on scales of tens to hundreds of kilometers. It includes algorithms for subgrid scale effects (such as terrain impingement), as well as longer range effects (such as pollutant removal due to wet scavenging and dry deposition, chemical transformation, and visibility effects of particulate matter concentrations). *http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#calpuff.*

impairment from PM is insignificant, the remainder of this notice will focus the State's NO_X and SO_2 BART determinations.

Each of the five units listed above is a "presumptive unit" [19] [20]. For EGUs greater than 200 MW in capacity and located at power plants with a total capacity greater than 750 MW, EPA established presumptive BART emission limits.[21] Each of the units that Kansas concluded was subject to BART falls within this category of sources. As presumptive units, each of the five units must as a general matter at least meet the presumptive emission limits as described in the BART Guidelines. As explained in the BART Guidelines, regardless of fuel type, for SO_2 control, each unit must at least meet a specific control level of 95 percent or an emission rate of 0.15 lbs/MMBtu unless an alternative control was determined to be justified through the five factor analysis. The presumptive control for NO_X is expressed as either an emission limit, or the installation of current combustion control technology. The decision to assign either a presumptive NO_X emission limit or a combustion control strategy is determined by the type of fuel combusted at the EGU.

The State's BART determination resulted in a limit which is more restrictive than the presumptive BART NO_X emission rates for Kansas City Power and Light's Units 1 and 2 of 0.10 lb/MMBtu and 0.23 lb/MMBtu, respectively (and 0.16 lb/MMBtu weighted average), to 0.13 lb/MMBtu on a 30-day rolling weighted average using the already permitted selective catalytic reduction (SCR) control for Unit 1 and combustion control for Unit 2 (described in more detail below and beginning on page 47 of the TSD to this rulemaking). The average must remain below 0.13 lb/MMBtu. In the event Unit 2 suffers an outage in excess of 10 weeks, the State has determined that the facility shall meet the 0.10 lb/MMBtu limit for NO_X at Unit 1.

EPA has previously stated that most EGUs can meet the presumptive NO_X limits through the use of current combustion control technology, i.e. low NO_x burners (LNB).[22] States must also consider advanced combustion control technology (SCR) in their BART analyses. Even though the presumptive NOx emission rate could be met through use of LNB, through its five factor analysis, the State considered the costs and benefits of SCR deployment on Kansas City Power and Light's Unit 2.

The State determined that the NO_X BART presumptive emission rates of 0.10 lb/MMBtu and 0.23 lb/MMBtu for Unit 1 and Unit 2, respectively (or 0.16 lb/MMBtu as a weighted average), resulted in a combined (SO_2 and NO_X) modeled visibility improvement of 78–81% at Class I areas (98th percentile visibility impact) and a reduction of the number of days with a visibility impact greater than 0.5 dv from a range of 57–138 days to 3–14 days at Class I areas. During the course of negotiating an enforceable BART agreement, Kansas City Power and Light proposed limits that were more restrictive than the presumptive BART limits. As provided above, these limits consist of an emission rate of 0.13 lb/MMBtu on a 30-day rolling weighted average between the two units.[23] At the 0.13 lb/MMBtu weighted average rate for both units, which is beyond the presumptive NO_X rate of 0.23 lb/MMBtu, EPA would not anticipate additional significant visibility improvement for the additional significant cost of installing SCR on Unit 2.

The State's BART determination for Kansas City Power and Light's Units 1 and 2 also resulted in a more restrictive limit than the presumptive BART SO_2 emission rates. The State has determined that an emission rate of 0.10 lb/MMBtu on a 30-day rolling weighted average (through the use of scrubbing technology) is SO_2 BART for these units.

The State has determined that Westar Energy must meet the presumptive BART NO_X emission rates for the Jeffrey Energy Center's Units 1 and 2 of 0.15 lb/MMBtu. As determined through its five factor analysis, and explained in greater detail in the TSD to this rulemaking, these emission rates will be met through the use of LNB systems for each unit. As part of the five factor analysis, the State considered the costs and benefits of deployment of SCR at Jeffrey Units 1 and 2. Given the high cost and relatively low visibility improvements resulting from use of SCR as compared to LNB at Jeffrey, the State determined, and EPA agrees, that LNB operated at the presumptive rate satisfy NO_X BART for Jeffrey Units 1 and 2. For Gordon Evans Unit 2, which is an oil-burning unit (that can burn natural gas) that meets the presumptive plant and unit size threshold, there is no prescribed presumptive limit for NO_X but reductions should be gained through the deployment of "current combustion control technology" [24] which has already been defined by EPA as the implementation of LNB or LNB with overfire air. A five factor analysis resulted in identification of a low NO_X burner system as BART for the unit. However, since the concurrent analysis for SO_2 reduction (discussed below) demonstrated that control through fuel switching to natural gas resulted in both SO_2 and NO_X emission reductions, and in visibility improvements beyond those gained by presumptive BART, Kansas has determined and EPA agrees that the fuel switch to natural gas meets the NO_X BART requirements.

The State has determined that Westar Energy must meet the presumptive SO_2 BART emission rate at the Jeffrey Energy Center's Units 1 and 2 of 0.15 lb/MMBtu. These emission rates will be met by rebuilding the wet scrubber on each unit. For Gordon Evans, use of low sulfur fuel was originally determined to be BART, however, analysis of fuel switching to natural gas revealed greater, cost effective emission reductions, and greater visibility improvement. Therefore, the State determined that switching fuel to natural gas, with 1 percent sulfur fuel oil available for emergency backup use only, meets the SO_2 BART. Westar currently has an existing supply of No.6 fuel oil on site and will be allowed to exhaust this emergency backup supply, with any future fuel oil purchases being 1 percent sulfur content or less by weight. Kansas has determined that this

[19] Appendix Y to Part 51–E.1.2.3.4—States must require 750 MW power plants to meet specific control levels for SO_2 of either 95 percent control or 0.15 lbs/MMBtu, for each EGU greater than 200 MW that is currently uncontrolled unless the State determines that an alternative control level is justified based on a careful consideration of the statutory factors.

[20] Appendix Y to Part 51–E.1.2.3.5.—For power plants with a generating capacity in excess of 750 MW currently using selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) for part of the year, the State should presume that use of those same controls year-round is BART. For other sources currently using SCR or SNCR to reduce NO_X emissions during part of the year, the State should carefully consider requiring the use of these controls year-round as the additional costs of operating the equipment throughout the year would be relatively modest. For coal-fired EGUs greater than 200 MW located at greater than 750 MW power plants and operating without post-combustion controls (i.e. SCR or SNCR), the EPA has provided presumptive NO_X limits, differentiated by boiler design and type of coal burned. The State may determine that an alternative control level is appropriate based on a careful consideration of the statutory factors.

[21] Appendix Y to Part 51–E.4. and 5.

[22] Appendix Y to Part 51–E.5.—Most EGUs can meet these presumptive NO_X limits through the use of current combustion control technology, i.e. the careful control of combustion air and low-NO_X burners. For units that cannot meet these limits using such technologies, you should consider whether advanced combustion control technologies such as rotating opposed fire air should be used to meet these limits.

[23] The weighted average limit is to be met by utilizing the already permitted SCR control for Unit 1 and pre- or post-combustion control (e.g., low NO_X burner, low NO_X burner with overfire air, or SCR) for Unit 2.

[24] Appendix Y to Part 51 section IV.E.5.

"alternative BART control for SO_2" would virtually eliminate SO_2 emissions from Gordon Evans Energy Center's Unit 2, the exception being an emergency when fuel oil would be allowed only for the duration of the emergency. The State has demonstrated, and EPA agrees, as shown in Table 5, that a switch to natural gas provides less visibility impairment than presumptive BART for Unit 2 for both SO_2 and NO_X.

TABLE 5—COMPARISON OF PRESUMPTIVE BART VISIBILITY IMPACT AND FUEL SWITCH VISIBILITY IMPACT

	Presumptive case 1 percent S oil, LNB at 0.8 lb/MMBtu (deciview)	Presumptive case 1 percent S oil, LNB at 0.2 lb/MMBtu (deciview)	Alternative BART case natural gas (deciview)
Maximum visibility impact	1.575	1.02	0.774
98 percent visibility impact	0.804	0.474	0.334
NO_X (lb/hr)	3,288	822	2136
SO_2 (lb/hr)	3,844	3.844	1.7
PM_{10} (lb/hr)	325	326	30.6

Based on the above analysis, in which the State carefully considered the five factors, and which is fully detailed in the TSD to this proposed rulemaking, EPA is proposing to find that the State of Kansas appropriately determined BART for each BART-subject unit in accordance with the CAA section 169A, 40 CFR 51.308(e)(ii)(A) and (B) and (iii) of the Regional Haze Rule, and the BART Guidelines.

TABLE 6—TOTAL 2018 REDUCTIONS IN NO_X AND SO_2 FROM KANSAS BART-SUBJECT UNITS

Subject-to-BART unit	tons/yr					
	2002 NO_X[1]	2002 SO_2[1]	2018 NO_X[2]	2018 SO_2[2]	NO_X reduction	SO_2 reduction
KCP&L—La Cygne 1	30,058	6,648	2,576	3,948	27,482	2,700
KCP&L—La Cygne 2	8,362	19,355	6,229	3,993	2,133	15,362
Westar—Gordon Evans 2	2,023	3,211	138	0.0	1,886	3,211
Westar—Jeffrey 1	9,602	20,459	4,268	3,532	5,334	16,927
Westar—Jeffrey 2	10,892	23,715	4,040	3,465	6,852	20,251
Total BART reductions					43,687	58,451

To incorporate the emission rates, compliance schedule, monitoring, recordkeeping, reporting, and enforceability requirements, as defined by the CAA and Federal regulations promulgated at 40 CFR 51.308(e)(1)(iv) and (v) as well as the BART Guidelines, the State entered into Consent Agreements with Kansas City Power and Light and Westar Energy on November 19, 2007 (amended February 18, 2009) and August 30, 2007 (amended February 20, 2009) respectively. These Consent Agreements were submitted to EPA for SIP approval as part of the State's RH SIP submittal, which we are proposing to approve in this notice. The Agreements are enforceable by the State, and upon approval into the State's SIP, are enforceable by EPA as well. The emission rates, or work practices, included in those agreements are summarized below. The Agreements require the facilities to meet these rates, or work practices, within 3 to 5 years after EPA approves the State's RH SIP):

1. The facilities must meet the emission rates on a 30-day rolling average

2. the facilities must monitor via the use of CEMS or stack test (with the exception of Unit 2 at Gordon Evans Energy Center)

3. the facilities must keep continuous record of monitoring data in accordance with 40 CFR Part 75, and

4. the facilities must report emissions data to the State in accordance with 40 CFR Parts 60 or 75. Westar Energy is required to report to the State fuel oil usage at Gordon Evans Unit 2 in accordance with K.A.R. 28–19–512.

Therefore, EPA is proposing to find that the State of Kansas has met the requirements for compliance schedules, monitoring, recordkeeping, reporting, and enforceability in accordance with 40 CFR 51.308(e)(1)(iv) and (v) and the BART Guidelines.

In its Consent Agreement, Kansas City Power and Light, is required to meet NO_X and SO_2 rates based on a 30-day rolling average of both subject-to-BART La Cygne Units 1 and 2, except during periods of startup and shutdown. In the second Consent Agreement, Westar Energy is required to meet NO_X and SO_2 rates based on a 30-day rolling average at subject-to-BART Jeffrey Energy Center Units 1 and 2, except during periods of startup, shutdown and malfunction. In the Regional Haze SIP, the State also committed, on page 52, to assess the visibility impacts of emissions from these BART-subject units during periods of startup, shutdown, and malfunction as part of its five-year review. Should the actual emission rates, including during startup, shutdown, and malfunction periods, exceed the agreed upon emission limits, and be found to negatively impact visibility at a Class I area, the State commits to address these issues with a SIP revision.

In the preamble to the BART rule, EPA offered guidance suggesting that states should exclude emissions attributable to startup, shutdown, and malfunction periods in modeling to determine which sources should apply BART controls. EPA did not, however, suggest that emission limitations for sources subsequently determined to be subject to BART should be applicable only during steady-state operations. Our review of the Kansas submittal indicates that the startup, shutdown, malfunction language in the Agreements appears to be inconsistent with EPA's September

20, 1999, guidance, "State Implementation Plans: Policy Regarding Excess Emissions during Malfunctions, Startup and Shutdown," because the Agreements provide an automatic exemption for startup, shutdown and malfunction emissions, and the exemptions for startup and shutdown are not narrowly defined.[25] Because the Consent Agreements exempt periods of startup and shutdown for both facilities from compliance with applicable emission limits and exempt periods of malfunction at Westar Energy, they raise approvability issues. In this action, EPA is proposing to approve the NO_X and SO_2 BART emission rates, compliance schedules, monitoring, recordkeeping, and reporting requirements for the Kansas City Power and Light and Westar Energy subject-to-BART units, and to disapprove the startup, shutdown, and malfunction provisions in the respective Consent Agreements and the State's Regional Haze SIP.[26]

Based on the above, EPA is proposing to find that the State of Kansas has met the requirements for establishing BART emission limitations and schedules for compliance with those emission limitations for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area, in accordance with 40 CFR 51.308(e) and the BART Guidelines. EPA's disapproval of the startup, shutdown, and malfunction provisions from EPA's approval of the SO_2 and NO_X BART emission rates in the Kansas City Power and Light and Westar Energy Consent Agreements and Regional Haze SIP does not trigger an obligation on the part of EPA to issue a FIP pursuant to section 110(c) of the CAA, 42 U.S.C. 7410(c). Kansas' inclusion of the startup, shutdown, and malfunction provisions as exemptions from the BART emission rates are not required elements of the Regional Haze SIPs to be developed and submitted by States pursuant to section 169 of the CAA. EPA is proposing to approve all required elements of Kansas' Regional Haze SIP, including, in particular, the BART emission rates, compliance schedules, monitoring, recordkeeping and reporting as required by 40 CFR 51.308(e) and the BART Guidelines, for Kansas City Power and Light and Westar Energy. Therefore, because EPA is proposing to find that all required Regional Haze SIP elements have been met, including BART for subject to BART units, and is proposing to approve those elements, EPA has met its obligation to take action on Kansas's Regional Haze SIP.

H. Long Term Strategy

As described in section II.G. of this notice, the LTS is a compilation of state-specific control measures relied on by the state for achieving its reasonable progress goals. When a state's emissions are reasonably anticipated to cause or contribute to impairment in a Class I area located in another state, the Regional Haze Rule requires the states to consult, state to state, in order to develop coordinated emission management strategies. This is addressed in section IV.C. above and in the TSD to this notice. In such cases, the 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 reasonable progress goal for the Class I area, as required by 40 CFR 51.308(d)(3)(ii). States must consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources, as required by 40 CFR 51.308(d)(3)(iv). For more discussion on the State's evaluation of potential sources of visibility impairment please see the discussion regarding the State's emissions inventory provided in section IV.E.2. and the TSD to this notice.

The State is also required to consider a number of emission reductions and sources listed in 40 CFR 51.308(d)(3)(v):

1. Emissions Reductions Due to Ongoing Air Pollution Programs

EPA is proposing to find that the State considered emission reductions for ongoing air pollution control programs as required by 40 CFR 51.308(d)(3)(v)(A). In Chapter 10 (section 10.4.3.1) of the State's SIP, the State outlines ongoing air pollution control programs that can be expected to result in visibility impairing pollutant reductions as follows: On Board Vapor Recovery (a 1994 Federal standard); On-board Diagnostics (a 1988 Federal standard and revised with the 1990 CAA amendments); Federal on-road and nonroad emissions standards such as Tier 2 Vehicle and Gasoline Sulfur Program (a 1999 Federal standard), the Clean Air On-Road Diesel Rule (a 2007 Federal standard), the Clean Air Nonroad Diesel Rule (a 2004 Federal standard), the Locomotive Emission Standards (a 2007 Federal standard), the Large Spark-Ignition and Recreational Vehicle Rule (a 2002 Federal standard); the Kansas City Ozone Maintenance Plan (required under CAA section 110(a)(1) and Federal regulations promulgated at 40 CFR 51.905(a)(3) and (4)); CAIR (only as it relates to determination of source apportionment—please see discussion in section III. of this proposed rulemaking); National Emission Standards for Hazardous Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT) standards (Federal standards); and Visibility Requirements under the New Source Performance Standards (NSPS) promulgated at 40 CFR 52.21(o).

2. Measures To Mitigate Construction Activities

EPA is proposing to find that the State of Kansas has considered measures to mitigate construction activities as required by 40 CFR 51.308(d)(3)(v)(B). The State proposed that it already meets this requirement by meeting the Visibility Requirements under the NSPS promulgated at 40 CFR § 52.21(o). Emissions such as windblown dust and nonroad diesel emissions related to commercial and residential construction activities were also considered by the State. The SIP explains (on page 81) that rapid growth is not projected for the State. In fact only minor growth is expected for the State, from about 2,700 people to 2,950 people (given in thousands) from 2005–2020.

Additionally, emissions from diesel engines (used in construction equipment) are expected to decline with the Federal standards for both on-road and nonroad engines (please see the emission inventory section (IV.E.2.) of this proposed rulemaking). Because commercial and residential growth is not expected to grow significantly in the coming years, and reductions are expected in non-road diesel engines (commonly used equipment during commercial and residential construction) from Federal programs, and because emissions from commercial and/or residential construction were not

[25] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," September 20, 1999; and 52 FR 45109 (November 24, 1987).

[26] The specific startup, shutdown, and malfunction provisions in the Kansas Regional Haze SIP that are being disapproved include: all references to "excluding periods of startup and shutdown" in Paragraph 23 of the Kansas City Power and Light Company Regional Haze Agreement; the reference to "excluding periods of startup, shutdown and malfunction" in footnote 1 of Appendix A to the Westar Energy, Inc. Regional Haze Agreement; all references to "excluding periods of startup and shutdown" in Chapter 9.3.1 of the Kansas Regional Haze SIP; and the sentence "The Agreements between KDHE and the affected BART sources currently exclude emissions associated with startup, shutdowns, and malfunctions (SSM) in the agreed upon emission limits." in Chapter 9.5 of the Kansas Regional Haze SIP.

identified as major sources of visibility impairing pollutants, EPA does not expect emissions from commercial or residential construction activities taking place within the State to have a significant impact on visibility impairment in Class I areas hosted by other States.

3. Emissions Limitations and Schedules for Compliance To Achieve the Reasonable Progress Goal

EPA is proposing to find that the State of Kansas has completed an analysis of the emissions reductions needed from sources in the State to obtain its share of the emissions reductions needed to meet the RPGs for Class I areas impacted by those emissions as required by 40 CFR 51.308(d)(3)(ii). The EPA also believes the State has established enforceable emissions limitations and schedules for compliance to meet the RPGs for those Class I areas as required by 40 CFR 51.308(d)(3)(v)(C) and (F). EPA also believes the Consent Agreements, discussed in section IV.G.3. of this proposal, incorporate those emission limits and establish a schedule for compliance in order to meet the RPGs of impacted Class I areas as required by 40 CFR 51.308(d)(3)(v)(C) and (F).

The State conducted an analysis of emission reductions that could be required of sources not already identified as BART-subject. The analysis was conducted in 6 steps. The TSD to this proposed rulemaking provides a detailed analysis of the steps used to identify emission reductions needed from sources in Kansas to meet the RPGs of impacted Class I areas in other states. The process is also discussed briefly below. The results of each step of the process are described in detail on the TSD to this proposed rulemaking.

Step 1: Identify all emission units in the State that emitted equal to 500 tons per year (tpy) of NO_X and/or SO_2 using the 2002 emissions inventory.

Step 2: Identify the most effective control technologies and screening for excessive costs.

Step 3: Model visibility impacts and screening of low-impact facilities.

Step 4: Screen and rank facilities based on cost per ton per deciviews improvement.

Step 5: Screen for non-cost regulatory factors, i.e. time necessary for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life.

Step 6: Sort and final list of facilities with the potential to need further emissions reductions.

Kansas identified a total of 30 units that emitted at least 500 tpy of NO_X and 28 units that emitted at least 500 tpy of SO_2. Of this set of units, 8 of the NO_X units and 10 of the SO_2 units were removed from further review for the following reasons:

- 6 of the NO_X units and 6 of the SO_2 units were already identified as BART-subject;
- 2 of the NO_X units and 2 of the SO_2 units had installed controls since 2002 and emitted less than 500 tpy of either pollutant.
- 2 of the SO_2 units were determined to have no commercially available controls.

The remaining set of 22 NO_X units included 11 EGUs, 6 cement kilns, 2 gas compressor engines, 1 refinery fluid-bed catalytic cracking unit (FCCU), 1 ammonia plant, and 1 glass furnace, all located at 15 separate facilities. The 18 SO_2 units were comprised of 13 EGUs, 4 cement kilns, and 1 refiner FCCU, all located at 12 facilities.

In the second step each of the remaining units, described above, were matched with the emission control technology selected for it by a CENRAP contractor utilizing the least marginal cost.[27] For units that were not identified by the contractor, the units were matched with control technologies, control efficiencies and control cost as determined by EPA's AirControlNET version 4.1.[28] Units whose cost of control was determined to be $10,000/ton reduced or greater were screened out in this step.

In the third step the visibility impacts at the Class I areas (previously identified in section IV.B. of this proposal) were evaluated for the remaining units using the CALPUFF protocol (previously described in section IV.G.2. of this proposal). Modeling was conducted on a facility-by-facility basis and NO_X and SO_2 emissions impacts were calculated in combination. The modeling was conducted analyzing pre- and post-control's (controls identified in Step 2 of the analysis) 98th percentile visibility impacts. Facilities whose highest pre-control 98th percentile impact was less than 0.100 dv were screened out in this step.

As a refinement to Step 3, the State re-ran CALPUFF for the remaining sources considering the impacts of NO_X and SO_2 separately. The State considered the pollutant emissions' visibility impacts separately because potential controls for a facility, to meet reasonable progress goals in a Class I area hosted by another State, could be pollutant dependent.

In the fourth step the State calculated the cost per ton per unit of dv improvement ($/ton/dv). The State estimated that the single value of $/ton/dv combined the cost and visibility improvement in a way that its numerical value increases: (a) As the cost of controls increases and (b) as the visibility improvement decreases. The State determined that the facility with the lowest $/ton/dv would be the first to be reviewed for possible controls to meet reasonable progress goals in Class I areas hosted by other States.

In the fifth step the State evaluated the energy and non-cost factors for each of the remaining facilities. Two units were screened out in this step due to the units' startup dates, 1950 and 1954, and the likelihood that they would be retired by 2018.

In the sixth step the State ranked all of the remaining facilities in increasing order of $/ton/dv. The State used a cost of $15,000/ton/dv as an exclusion threshold from further consideration.

Based on its six step analysis, the State determined that the implementation of controls or work practices, provided in Table 7, were required to meet RPGs in Class I areas hosted by other states.

TABLE 7—CONTROL OR WORK PRACTICE STRATEGIES FOR WESTAR UNITS TO MEET KANSAS LONG TERM STRATEGY REQUIREMENTS

Facility/unit	Emission rate or work practice
Gordon Evans Energy Center—Unit 1.	A fuel switch to natural gas at all times, with the exception of a gas curtailment order from the gas supplier, in which case the facility will be allowed to utilize backup #6 fuel oil.
Hutchinson—Unit 4	A fuel switch to natural gas at all times, with the exception of a gas curtailment order from the gas supplier, in which case the facility will be allowed to utilize backup #6 fuel oil.

[27] "Final CENRAP Control Strategy Analysis Plan—9 May 2006" page 36. *http://www.cenrap.org/html/projects.php.*

[28] "Final CENRAP Control Strategy Analysis Plan—9 May 2006" page 36. *http://www.cenrap.org/html/projects.php.*

TABLE 7—CONTROL OR WORK PRACTICE STRATEGIES FOR WESTAR UNITS TO MEET KANSAS LONG TERM STRATEGY REQUIREMENTS—Continued

Facility/unit	Emission rate or work practice
Murray Gill—Units 1, 2, 3 and 4	A fuel switch to natural gas at all times, with the exception of a gas curtailment order from the gas supplier, in which case the facility will be allowed to utilize backup #6 fuel oil.
Neosho—Unit 7	A fuel switch to natural gas at all times, with the exception of a gas curtailment order from the gas supplier, in which case the facility will be allowed to utilize backup #6 fuel oil.
Jeffery Energy Center—Unit 3	An emission limit of 0.15 lbs/MMBtu for both SO_2 and NO_X.
Lawrence—Unit3	An emission limit of 0.18 lbs/MMBtu for SO_2.
Lawrence—Unit 4	An emission limit of 0.18 lbs/MMBtu for SO_2; an emission limit of 0.15 lbs/MMBtu for NO_X.
Lawrence—Unit 5	An emission limit of 0.15 lbs/MMBtu for both SO_2 and NO_X.
Tecumseh—Unit 7/9	An emission limit of 0.18 lbs/MMBtu for SO_2.
Tecumseh—Units 8/10	An emission limit of 0.18 lbs/MMBtu for SO_2.

As previously discussed in this section of this proposal, Consent Agreements (given in Appendix 9.7 of the SIP) provide a mechanism to enforce these determinations and set the compliance schedules for these measures. The controls detailed above are expected to achieve approximately 10,409 tpy of NO_X and 22,812 tpy of SO_2 reductions.

TABLE 8—ESTIMATED NO_X AND SO_2 EMISSION REDUCTIONS FOR IMPLEMENTATION OF CONTROLS OR WORK PRACTICES REQUIRED BY KANSAS' LONG TERM STRATEGY

Facility	Unit	2002 NO_X Emissions (tpy)	2002 SO_2 Emissions (tpy)	Post control NO_X (tpy)	Post control SO_2 (tpy)	NO_X Reductions (tpy)	SO_2 Reductions (tpy)
Gordon Evans	1	258.7	617.7	211.9	0.5	46.8	617.2
Hutchinson	4	267.1	734.3	158.5	0.6	108.5	733.7
Jeffrey	3	10,807.4	23,206.0	4,913.1	4,913.1	5,894.3	18,292.9
Lawrence	3	728.4	1,965.4	0.0	1,965.4	728.4	0.0
Lawrence	4	1,986.5	1,430.0	835.4	835.4	984.1	594.7
Lawrence	5	3,546.3	4,546.3	2,564.7	2,564.7	981.6	1,789.0
Gill	1	0.0	0.0	0.0	0.0	0.0	0.0
Gill	2	4.5	0.0	4.0	0.0	0.5	0.0
Gill	3	181.6	452.1	148.6	0.3	33.0	451.8
Gill	4	103.8	333.3	85.2	0.2	18.7	333.1
Neosho	7	0.0	0.0	0.0	0.0	0.0	0.0
Tecumseh	7	1,530.6	2,692.7	691.6	2,692.7	839.0	0.0
Tecumseh	8	1,876.9	4,514.9	1,103.1	4,514.9	773.8	0.0
Total						10,408.7	22,812.4

In summary and as further detailed beginning on page 48 of the TSD, the State utilized a six-step process to determine emission reductions needed from sources within the State that are necessary to meet PRGs of Class I areas hosted by other states. In doing so, the State carefully considered and eliminated further controls based upon the factors. Balancing these factors, and elimination of controls based particularly on high cost of control coupled with minimal contribution to visibility impacts at Class I areas hosted by other states, and remaining useful life, resulted in the list controls required to meet RPGs in Class I areas hosted by other states, as set forth above. The State found in particular that for BPU Nearman Unit 1, although additional controls were found to be cost effective, in light of the source's relatively minor contribution to visibility impacts at Class I areas, no further controls would be required. In addition, as previously discussed in section IV.C. of this proposed rule, the State of Kansas consulted with the States of Missouri, Texas, Oklahoma, and Arkansas, and determined that these states were not relying on additional Kansas controls beyond BART and "on the books" controls to meet the RPGs for the Class I areas in those states. In addition, as described in section IV.E.4. of this proposed rule, the State will again consider whether further controls are necessary as part of the State's five year review of the SIP.

Based on the analysis above, EPA is proposing to find that the State of Kansas has completed an analysis of the emissions reductions needed for source in the State in order to obtain its share of the emissions reductions needed to meet the RPGs for Class I areas impacted by emissions from the State, and has established enforceable emissions limitations and schedules for compliance necessary to meet the RPGs for those Class I areas as required by 40 CFR 51.308(d)(3)(ii) and (d)(3)(v)(C) and (F).

4. Source Retirement and Replacement Schedules

EPA is proposing to find that the State of Kansas has considered source retirement and replacement schedules as required by 40 CFR 51.308(d)(3)(v)(D). The IPM runs (previously discussed in section IV.E.4. of this proposal) projected closure of several gas-fired boilers in the State. However, when the State communicated directly with those facilities they found that this assumption was incorrect. The State is aware of only two coal-fired EGUs that may be retired within the next 10 years: Kansas City BPU–KAW, units 1 and 3; and Empire District Electric-Riverton, units 7 and 8. Kansas

City BPU–KAW units 1 and 3 have been on cold stand-by since 2001 and 2003 respectively. Units 1 and 3 would be subject to Prevention of Significant Deterioration (PSD) permitting requirements if the facility were to restart them. Empire District Electric-Riverton units 7 and 8 have start-up dates of 1950 and 1954 respectively, and will likely be retired by 2018. The State has included a commitment, on page 83 of the State's Regional Haze SIP, to address any other sources that are retired or are replaced in conformance with existing State SIP requirements pertaining to PSD and NSR permitting, in the next SIP planning period.

5. Smoke Management

EPA is proposing to find that the State of Kansas has considered smoke management techniques for agricultural and forestry management as required by 40 CFR 51.308(d)(3)(v)(E) and that it has considered emissions control strategies as outlined in the Agency's "Interim Air Quality Policy on Wildland and Prescribed Fires".[29] Emissions from area source fires, by burn type and pollutant are provided in Table 9.

TABLE 9—2002 KANSAS EMISSIONS BY BURN TYPE AND POLLUTANT

Burn type	Acres burned	2002 tons						
		PM_{10}	$PM_{2.5}$	CO	NO_X	SO_2	NH_3	VOC
Rangeland	3,625,270	75,943	52,901	652,250	23,185	10,160	7,487	43,483
Cropland	1,390,520	23,227	22,156	153,313	5,909	777	3,950	11,401
Prescribed	38,106	1,450	1,226	14,424	228	114	143	881
Totals	5,053,896	100,620	76,283	819,987	29,322	11,052	11,579	55,765

The impact of planned burning to visibility at Class I areas was evaluated by a contractor during the development of both the planned burning emissions inventory and the "Causes of Haze Assessment" for the CENRAP region.[30] The July 30, 2004 [31] study conducted as part of the planned burning inventory analyzed ambient speciated $PM_{2.5}$ data from the IMPROVE network at two Class I areas (Caney Creek and Upper Buffalo Wilderness Areas) to determine which chemical compositions characterize prescribed burning activity. The study found that levels of elemental carbon and non-soil potassium were elevated on days during or after agricultural burning in the area. However, the contribution of elemental carbon, the primary marker of smoke, is a small part of the $PM_{2.5}$ mass. While elemental carbon has relatively high extinction efficiency, the mass concentrations are small and do not contribute significantly to light extinction. The State has committed to continue support of the Kansas Smoke Management Plan initiative.

6. Anticipated Net Effect on Visibility Resulting From Projected Changes to Emissions

EPA is proposing to find that the States evaluation of the net effects on visibility resulting from projected emission reduction from Kansas sources meets the requirements of 40 CFR 51.308(d)(3)(v)(G). The 2002 to 2018 projected visibility improvement at the nine Class I areas, from emission reductions in Kansas, result mostly from the implementation of NO_X and SO_2 controls on the five BART–subject EGUs. The projected visibility improvements from these reductions are shown in Table 10 and are shown in terms of light extinction.

The impact on the WIMO is expected to be reduced by 1.03715 Mm^{-1}, which represents a 23 percent change in Kansas' impact on the WIMO between 2002 and 2018. Further improvement will come from the control of sources identified in Table 7 above. Discussion of any potential emission increases by the year 2018 is discussed in detail in the TSD to this notice.

TABLE 10—NET 2002 TO 2018 IMPROVEMENT IN VISIBILITY AT SELECTED CLASS I AREAS DUE TO BART CONTROLS IN KANSAS

Class I area	Net 2002–2018 light extinction difference (improvement) from Kansas sources (Mm^{-1})
Caney Creek (Arkansas)	0.63493
Upper Buffalo (Arkansas)	0.44533
Great Sand Dunes (Colorado)	0.03322
Rocky Mountain (Colorado)	0.06051
Hercules-Glades (Missouri)	0.56911
Mingo (Missouri)	0.58719
Wichita Mountains (Oklahoma)	1.03715
Badlands (South Dakota)	0.12856
Wind Cave (South Dakota)	0.16741

V. What action is EPA proposing?

EPA is proposing to approve the State of Kansas' Regional Haze SIP, submitted on November 9, 2009, with the exception of certain provisions related to startup, shutdown, and malfunction, as explained in section IV.G.3. of this notice. EPA is proposing to find that the submittal meets all of the applicable

[29] Interim Air Quality Policy on Wildland and Prescribed Fires—*http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf.*

[30] *http://www.cenrap.org/html/projects.php.*

[31] "Sonoma Technology, Inc. Research and Development of Planned Burning Emission Inventories for the Central States Regional Air Planning Association—July 30, 2004".

Regional Haze requirements set forth in section 169A and 169B of the Act and in the Federal regulations codified at 40 CFR § 51.300–308, and the requirements of 40 CFR Part 51, Subpart F and Appendix V.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: August 15, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–21567 Filed 8–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0601; FRL–9453–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_x), and particulate matter (PM) emissions from flares. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 22, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0601, by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov*. Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov*.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *Law.Nicole@epa.gov*.

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was amended by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4311	Flares	06/18/09	01/10/10

On February 4, 2010, EPA determined that the submittal for SJVUAPCD Rule 4311 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 4311 into the SIP on February 26,

2003 (68 FR 8835). The SJVUAPCD amended revisions to the SIP-approved version on June 15, 2006 and June 18, 2009 and CARB submitted them to us on December 29, 2006 and January 10, 2010. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule revisions?

VOCs and NO_X help produce ground-level ozone and smog, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NO_X, and PM emissions. SJVUAPCD Rule 4311 minimizes flaring events by requiring flare minimization plans (FMPs), monitoring of flare activity and emissions, and related recordkeeping. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), must not interfere with any applicable requirements concerning attainment and reasonable further progress (RFP), and must not relax existing requirements (see sections 110(l) and 193). Section 172(c)(1) of the Act also requires implementation of all reasonably available control measures (RACM) as expeditiously as practicable in nonattainment areas. The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4311 must fulfill RACT. Additionally, the RACM requirement in CAA section 172(c)(1) applies to this area.

Guidance and policy documents that we use to evaluate enforceability and RACT and RACM requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

4. "State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Amendments of 1990" 57 FR 13498, April 16, 1992.

5. "Preamble, Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard" 70 FR 71612; Nov. 29, 2005.

6. Letter from William T. Hartnett to Regional Air Division Directors, "RACT Qs & As—Reasonable Available Control Technology (RACT) Questions and Answers," May 18, 2006.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

Dated: August 8, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–21368 Filed 8–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 11–116 and 09–158; CC Docket No. 98–170; FCC 11–106]

Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges ("Cramming"); Consumer Information and Disclosure; Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to seek comment on proposed amendments to the Commission's Truth-in-Billing rules that would require wireline telephone companies (*i.e.* wireline telecommunications common carriers) to notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their Web sites, of the option to block third-party charges from their telephone bills, if the company offers that option, and place charges from non-telephone company third-parties in a bill section separate from telephone company charges, and would require both wireline and wireless (*i.e.* Commercial Mobile Radio Service ("CMRS") common carriers) telephone companies to notify subscribers on all telephone bills and on their Web sites that subscribers may file complaints with the Commission, provide the Commission's contact information for the submission of complaints, and include on Web sites a link to the Commission's complaint Web page. This action will enable subscribers to detect, rectify, and prevent placement of unauthorized charges on their telephone bills; a practice known as "cramming."

DATES: Comments are due on or before October 24, 2011. Reply comments are due on or before November 21, 2011.

ADDRESSES: You may submit comments, identified by CG Docket No. 11–116 by any of the following methods:

- *Federal Communications Commission's Web site:* Follow the instructions for submitting comments.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John B. Adams, Consumer and Governmental Affairs Bureau, Policy Division, at (202) 418–2854 (voice), or e-mail *JohnB.Adams@fcc.gov.*

For additional information concerning the potential new or revised information collection requirements contained in document FCC 11–106, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via e-mail *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking ("*NPRM*"), FCC 11–106, adopted and released on July 12, 2011, in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, *fax:* (202) 488–5563, or *Internet: http://www.bcpiweb.com.* This document can also be downloaded in Word or Portable Document Format ("PDF") at *http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Pursuant to 47 CFR 1.1200 *et seq.*, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

In the NPRM, the Commission proposes rules to require wireline and wireless telephone companies to provide to subscribers information that will enable subscribers to detect, rectify, and prevent cramming. Cramming is the placement of unauthorized charges on subscribers' telephone bills. Specifically, the Commission proposes that wireline telephone companies disclose to subscribers information about blocking of third-party charges and place third-party charges in a separate bill section from all telephone company charges. The Commission further proposes that wireline and wireless telephone companies, on their bills and on their Web sites, notify subscribers that they can file complaints with the Commission, provide the Commission's contact information for filing complaints, and provide a link to the Commission's complaint Web site on their Web sites.

Disclosure of Blocking of Third-Party Charges

The Commission proposes that wireline telephone companies that offer subscribers the option to block third-party charges from their telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each bill, and on their Web

sites. The Commission seeks comment on specific details about how this disclosure should be implemented. The proposed rules amend the Commission's Truth-in-Billing rules (codified at 47 CFR 64.2400–64.2401), which mandate "clear and conspicuous" disclosure (*i.e.* notice that would be apparent to the reasonable consumer) of certain information on telephone bills. The Commission seeks comment on the wording, placement, font size, and other relevant factors, at the point of sale, on bills, and on Web sites, that would be necessary for this notification, as well as any notification about fees for blocking, to satisfy this standard. Can existing practices of telephone companies that already offer blocking be improved other than by the proposed disclosures, such as by better training of customer service representatives?

Separate Bill Section for Third-Party Charges

The Commission proposes that wireline telephone companies place charges from non-telephone company third parties in a distinct section of the telephone bill separate from telephone company charges. The Commission's Truth-in-Billing rules already require charges from different telephone companies on a single telephone bill to be separated. Those rules also permit service bundles to be listed as a single service offering of the telephone company, even if the bundle includes third-party services. No change is proposed as to the manner in which bundles may be billed under our rules. Are more specific requirements needed? Should third-party charges be listed separately on the first page of telephone bills or further highlighted in some other fashion? Is there any need to require identification of the third-party vendor associated with each charge beyond the requirements already contained in the Truth-in-Billing rules? What changes will telephone companies need to make to billing systems to comply with this proposed rule? How much will these changes cost and how long will they take? Are there ways to minimize burdens on telephone companies, especially smaller ones?

Disclosure of Commission Contact Information

Information available to the Commission, including a report from the General Accountability Office, indicates that many telephone subscribers do not know how to file complaints about telephone service. The Commission proposes that wireline and wireless telephone companies, on their bills and on their Web sites, clearly and conspicuously notify subscribers that they can file complaints with the Commission, provide the Commission's contact information for filing complaints, and provide a link on their Web sites to the Commission's complaint Web site. The disclosure should include the Commission's telephone number and Web site address. How much will it cost telephone companies to comply with this requirement, and how long will it take them to comply?

Wireless and Internet Telephone Service

The Commission seeks comment on whether all of the rules proposed for wireline telephone service also should apply to wireless and Internet telephone service. Complaint data from the Commission and the Federal Trade Commission indicate that approximately 80% to 90% of cramming complaints relate to wireline telephone service. What is the nature and magnitude of cramming for wireless telephone service? What percentage of unauthorized charges is from wireless telephone companies, and what percentage is from third parties? Do unauthorized charges occur more frequently with particular types of wireless service plans or features? Does cramming affect wireless telephone subscribers differently than wireline telephone subscribers? How? Are there differences between wireline and wireless telephone industry practices or billing platforms that are relevant in assessing the propriety and effectiveness of potential regulatory solutions? What are the differences? The Commission seeks current and updated data from states regarding wireless cramming and how differences in state authority over wireless telephone service impact the need for federal oversight. Can industry practices or voluntary guidelines successfully address cramming for wireless telephone service? To what extent are industry guidelines and practices evolving to address cramming, such as in-application marketing? Are options to block third-party charges, if any, clearly and conspicuously disclosed to subscribers?

Additional Questions for Comment

The Commission seeks comment on other possible requirements that may help subscribers to detect, rectify, and prevent cramming.

Disclosure of Third-Party Contact Information: Should telephone companies clearly and conspicuously provide contact information for each third party in association with its charges? Should specific contact information be provided, such as the third party's name and toll-free customer service telephone number? The Commission's Truth-in-Billing rules permit, but do not require, telephone companies to provide contact information for third parties if the third party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve subscriber complaints. Implicit in this proviso is a requirement for the telephone company to verify the contact information. To what extent do telephone companies already verify third-party contact information? What would be the incremental burden on telephone companies to do so? How and to what extent would imposing a verification requirement benefit subscribers, telephone companies, or both? Should any particular form of verification be required? At what intervals should telephone companies be required to re-verify third-party contact information?

Requiring Wireline Telephone Companies to Offer Blocking: Should wireline telephone companies be required to block third-party charges upon subscriber request? If so, should they be prohibited from charging a fee for doing so? Many wireline telephone companies already offer blocking at no additional fee, which suggests that there is no technical or cost barrier to making blocking available, or that the cost of doing so is not sufficiently high to warrant additional fees beyond the monthly recurring charge for wireline telephone service. What technical or cost barriers exist? Which telephone companies offer blocking? What specific types or categories of charges are blocked? Is an additional fee is assessed for blocking, and what is the amount of the fee? How was the amount of the fee determined? What kinds or types of charges should be subject to blocking if wireline telephone companies were required to block them, such as charges from long distance telephone companies, Internet service providers and other providers affiliated with the telephone company, and non-telephone company third parties? Should bundles, which may contain services provided by third parties, be treated differently?

Prohibiting All Third-Party Charges on Wireline Telephone Bills: The Commission seeks comment on the impact, both positive and negative, that prohibiting third-party charges on wireline telephone bills, unless the subscriber opts in, may have on wireline telephone companies, subscribers, and third parties. What is the scope of the Commission's authority to impose such a ban? What kinds or types of charges

should be subject to such a prohibition on third-party charges?

Due Diligence: The Commission seeks comment on whether it should require carriers, before contracting or agreeing with a third party to place its charges on telephone bills, to screen each third party to ensure that it has operated and will continue to operate in compliance with all relevant state and federal laws. What is the nature and adequacy of current industry practices in this regard? How are telephone companies monitoring and tracking subscriber complaints with respect to cramming? What thresholds exist with respect to cramming complaints before a telephone company takes adverse action against a third party? Should such thresholds be required and what should they be? What annual percentage of charges from third parties is refunded, uncollectible, or unbillable? To what extent do telephone companies attempt to identify affiliated companies after one affiliate has been identified as engaging in cramming, attempt to track whether a company continues under a different name, or attempt to track whether the same persons engage in cramming via a new company? How successful have telephone companies been in doing so? What penalties or other measures are employed to deter cramming? Are there improvements that could be made or do better deterrents exist? How many third parties submit charges to telephone companies for placement on telephone bills? What are their lines of business or types of products? How many real parties in interest are there owning or operating these companies? How could third parties change or improve their efforts to monitor and track cramming complaints?

Federal-State Coordination: To address potential subscriber confusion about to which state and federal agencies they can complain about cramming and recognizing that coordinated state and federal efforts is a critical component to protecting subscribers, the Commission seeks comment on how to better coordinate sharing of cramming complaints and information. Are there ways to share information, such as through the shared complaint database maintained by the Federal Trade Commission? Should wireline and wireless telephone companies report trends or spikes in complaints they receive about specific third parties? What is the nature and extent of the cramming problem in each state? What is the number of wireline and wireless cramming complaints? What are the trends in the last few years? What enforcement or legislative actions have states taken to address cramming?

Accessibility: How will the Commission's proposed rules affect, and could they be improved to better assist, people with disabilities, people living in Native Nations on Tribal Lands in Native communities, and people with limited English proficiency. What measures should telephone companies take to ensure that the information they provide to subscribers is accessible to such individuals.

Internet Telephone Service: The Commission seeks comment on whether any of the proposed rules, any of the other requirements discussed, or similar requirements should apply to providers of Internet telephone service (*i.e.* interconnected VoIP service). Do bills for Internet telephone service raise the same risks of cramming as wireline or wireless telephone service? Are there differences that necessitate a different regulatory approach? What kinds of safeguards are needed to protect and would be effective in protecting Internet telephone service subscribers from cramming?

Definition of Service Provider or Service: The Commission seeks comment on the need to define "service provider" or "service," as those terms are used in the Truth-in-Billing rules, to better address charges that arguably may not be for a service. What specific definitions would be effective? Are there alternatives, such as changing the Truth-in-Billing rules to refer to more than services and service providers? What specific rules would need to be changed and what specific changes would be needed?

Effective Consumer Information Disclosure

In proposing rules to improve transparency on cramming or any other consumer issue, the Commission intends to look at the many factors involved in effective consumer information disclosure. This will ensure that the rules serve their intended purpose without posing an undue burden on industry. There are two key criteria for the success of such an approach. First, acknowledging the potential difficulty of quantifying benefits and burdens, the Commission needs to determine whether the proposed disclosure rules will significantly benefit consumers and, in fact, clarify important issues for them—for example, by helping them detect hidden charges, making contractual terms more transparent, or clarifying rates and fees. Second, the Commission seeks to maximize the benefits to consumers from our proposed rules while taking into consideration the burden of compliance to carriers. These costs and benefits can have many dimensions, including cost and revenue implications for industry, financial benefits to consumers, and other, less tangible benefits, such as the value of increasing consumer choice or preventing fraud.

To address the first criterion in the case of cramming, the Commission seeks comment on the best ways to ensure that the proposed disclosures will actually benefit consumers. To what extent may consumers be expected to utilize the additional information? Are there ways to implement the disclosures that would increase the number of consumers who will benefit and the nature of the benefits? What are the best ways to ensure that disclosure of third-party charges on bills is clear and conspicuous; that third-party blocking options are clearly disclosed; and that FCC contact information is provided in ways that consumers will see it and know how to use it? What, if any, are the best practices of consumer disclosure in other areas and of assessing the effectiveness of disclosures? Are there other examples, research, and recommendations that would be applicable here?

To address the second criterion in the case of cramming, the Commission seeks comment on the nature and magnitude of the costs and benefits of the proposed rules to consumers and carriers. How, if at all, do these vary by telephone company and by type (*e.g.*, wireline, wireless) and size of telephone company? What, if any, specific concerns exist for telephone companies serving rural areas, Native Nations on Tribal lands and Native communities, and their customers. The Commission seeks specific information about whether, how, and by how much such carriers and their customers may be impacted differently in terms of the costs and benefits of the proposed rules. What is the most cost-effective approach for modifying existing policies and practices to achieve the goals of the proposed rules?

The Commission seeks comment on the extent of cramming, including totals for all charges and unauthorized charges from third parties, total annual unauthorized charges to wireline and CMRS consumers, amounts credited annually to consumers for unauthorized charges, total uncollectible charges, how much the proposed rules will reduce these amounts, and methods to quantify unauthorized charges accurately. The Commission also seeks comment on the costs to consumers to block third-party charges, to monitor bills to guard against

cramming, and to resolve disputes over unauthorized charges, including intangible costs like time. The Commission invites comment regarding consumers' experiences with unauthorized charges.

How and how much has cramming affected consumer confidence and decisions of whether to purchase particular kinds of goods or services? Will the proposed rules lead to increased consumer purchasing, and how much? What are potential costs of cramming to third-party vendors that do not engage in cramming, such as costs associated with reduced demand for their products due to a loss of consumer confidence in the marketplace, and reduced innovation and investment due to lower demand for their products? What are the potential costs that the proposed rules and other potential requirements may impose on third-party vendors, such as lost revenue from legitimate transactions? Are there any other potential costs and/or benefits to third-party vendors from the proposed rules?

What are the specific kinds and amounts of compliance costs that carriers may incur? If billing or other system modifications are required, what is the exact nature of those modifications, the time required to implement them, and their cost? What is the amount of annual revenue that carriers receive from providing billing-and-collection services to third parties and the anticipated reduction, if any, that would result from adoption of the proposed rules or other requirements? Will these figures differ depending upon which third-party charges are blocked? What are telephone companies' costs to offer the ability to block all third-party charges?

The Commission seeks comment on the nature and magnitude of costs that carriers might avoid or reduce by complying with the proposed rules. Some possible cost savings might be reductions in the number of calls to customer service, reduced costs to process refunds, reduced costs to investigate disputed charges, reduced uncollectible charges, reduced costs to monitor billing activities by third parties, and reduced costs to audit third parties or to develop and monitor performance improvement plans imposed upon third parties.

The Commission seeks comment on and quantification of any other costs and benefits that it should consider, and information that will enable it to weigh the costs and benefits associated with the proposed rules. Commenters should provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. Vague or unsupported assertions generally can be expected to be less persuasive than more specific and supported statements.

Legal Issues

Communications Act: What is the nature and scope of the Commission's authority under the Communications Act of 1934, as amended, to adopt the proposed rules and regarding the additional issues for comment? The Commission believes that it has authority under Section 201(b) of the Communications Act to adopt the proposed rules. The bill format and labeling requirements in the Truth-in-Billing rules are based, in whole or part, on the Commission's authority under Section 201(b) of the Communications Act to enact rules to implement the requirement that all charges, practices, classifications, and regulations for and in connection with interstate communications service be just and reasonable. The problem of crammed third-party charges depends on and arises from the relationship between the telephone company and its customer; telephone bills are an integral part of this relationship. Unauthorized third-party charges appear on telephone bills only because the telephone company permits them to be there. Further, if it is not clear on a telephone bill what a charge is for and who the service provider is, a consumer may erroneously believe that the charge is related to a service provided by the telephone company.

Section 332(c)(1)(A) of the Communications Act states that wireless telephone companies are subject to Section 201(b) authority for their common carrier services. They largely are subject to the Truth-in-Billing rules promulgated under Section 201(b) to the same extent as wireline telephone companies for common carrier services. Thus, the Commission believes that its authority to extend the proposed rules and other requirements to wireless telephone companies is co-extensive with its authority to promulgate them for wireline telephone companies. The Commission seeks comment on this analysis.

Does the Commission need to invoke its ancillary Title I authority to adopt requirements to address cramming? The Commission "may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities." *Comcast Corp.* v. *FCC*, 600 F.3d 642, 646 (DC Cir. 2010) (quoting *American Library Ass'n* v. *FCC*, 406 F.3d 689, 691–92 (DC Cir. 2005)). An exercise of such authority under Title I may be necessary here because entities that are not classified as common carriers nonetheless may, like common carriers, provide billing-and-collection services for third parties or submit charges for inclusion on a telephone bill.

The Commission has previously asserted ancillary jurisdiction over VoIP providers in other contexts. *See, e.g., IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, 10261–66, paragraphs 26–35 (2005) (rules requiring VoIP providers to supply enhanced 911 capabilities to their customers), *aff'd sub nom. Nuvio Corp.* v. *FCC*, 473 F.3d 302 (DC Cir. 2007). Can and should the Commission exercise Title I authority to apply the proposed rules to any non-carriers? Are there particular entities, including but not limited to interconnected VoIP providers, that should be subject to the proposed rules? Further, the Commission has previously asserted that its Title I authority extends to a common carrier's provision of billing-and-collection services to third parties that are not carriers. *See Detariffing of Billing and Collection Services, Report and Order*, 102 FCC 2d 1150, paragraphs 35–38 (1986). It seeks comment on whether that authority would extend to the proposals in the NPRM.

First Amendment: A regulation of commercial speech will be found compatible with the First Amendment if: (1) There is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest. *Central Hudson Gas and Electric Corp.* v. *Public Service Commission*, 447 U.S. 557, 566 (1980). Moreover, "regulations that compel 'purely factual and uncontroversial' commercial speech are subject to more lenient review than regulations that restrict accurate commercial speech." *See, e.g., New York State Restaurant Association* v. *New York City Board of Health*, 556 F.3d 114, 132 (2nd Cir. 2009) (upholding New York City health code requiring restaurants to post calorie content information on their menus and menu boards) (citing *Zauderer* v. *Office of Disciplinary*

Counsel, 471 U.S. 626, 651 (1985)); *National Elec. Mfrs. Ass'n* v. *Sorrell*, 272 F.3d 104, 113 (2nd Cir. 2001) (upholding Vermont statute prescribing labeling requirements on mercury-containing lamps).

The Commission's statutory obligations include protecting consumers from unjust or unreasonable charges and practices. The record in this proceeding suggests that consumers continue to incur substantial costs each year from the inclusion of unauthorized charges on their telephone bills. The proposed rules are designed to advance the government's interest by providing consumers with basic tools necessary to protect themselves from these unauthorized charges. The Commission seeks comment on whether the proposed rules and other issues for comment are consistent with these and any other First Amendment considerations.

Procedural Matters

Ex Parte Presentations: This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted in accordance with the Commission's rules.

Filing of Comments and Reply Comments: Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may submit comments, identified by CG Docket No. 11–116 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 11–116. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.
- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Because three docket numbers appears in the caption of this proceeding, filers must submit four additional copies for the additional docket numbers. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com*. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

The comments and reply comments filed in response to this NPRM will be available via ECFS at: *http://fjallfoss.fcc.gov/ecfs2/*. You may search by docket number (Docket No. CG–11–116). Comments are also available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from Best Copy and Printing, Inc., telephone (800) 378–3160, facsimile (301) 816–0169, e-mail *FCC@BCPIWEB.com*.

Accessibility Information: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). This *Notice of Proposed Rulemaking* also can be downloaded in Word and Portable Document Formats ("PDF") at *http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill*. Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by *e-mail at: FCC504@fcc.gov;* phone: 202–418–0530 or TTY: 202–418–0432.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

In document FCC 11–106, the Commission summarized the record compiled in this proceeding and the Commission's own complaint data. The record confirms that cramming is a significant and ongoing problem that has affected wireline consumers for over a decade, and drawn the notice of Congress, states, and other federal agencies. The substantial volume of wireline cramming complaints that the Commission, FTC, and states continue to receive underscores the ineffectiveness of voluntary industry practices and highlights the need for additional safeguards. Recent evidence, such as the volume of wireless cramming complaints and wireless carriers" settlement of litigation regarding unauthorized charges, raises a similar concern with unauthorized charges on Commercial Mobile Radio Service ("CMRS") bills, such as those of providers of wireless voice telephone service.

Although the Commission has addressed cramming as an unreasonable practice under Section 201(b) of the Communications Act, there are currently no rules that specifically address unauthorized charges on wireline telephone bills. The Commission believes that adopting such requirements will provide consumers with the safeguards they need to protect themselves from this risk.

Legal Basis

The legal basis for any action that may be taken pursuant to the NPRM is contained in Sections 1–2, 4, 201, 301, 303, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, 301, 303, 332, and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA"). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. The NPRM seeks comment generally on wireline and wireless telecommunications common carriers. However, as noted in Section IV of the NPRM, the Commission seeks comment on how to reduce burdens on small entities.

Incumbent Local Exchange Carriers ("Incumbent LECs"). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM. Thus, under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

Competitive Local Exchange Carriers ("Competitive LECs"), Competitive Access Providers ("CAPs"), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year. Of those, 1,368 firms had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service ("PCS"), and Specialized Mobile Radio ("SMR") telephony services. An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, it estimates that the majority of wireless firms are small.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 434 carriers report that they are engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees. Therefore, the

Commission estimates that 222 of these entities can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In the NPRM, the Commission proposes requirements that: (1) Require wireline carriers to notify subscribers clearly and conspicuously at the point of sale, on each bill, and on their Web sites, of the option to block third-party charges from their telephone bills, if the carrier offers that option; (2) require wireline carriers to place charges from non-carrier third-parties in a bill section separate from carrier charges; and (3) require wireline and CMRS carriers to include on all telephone bills and on their Web sites the Commission's contact information for the submission of complaints. The record reflects that cramming primarily has been an issue for wireline telephone customers. However, there is evidence of a concern with unauthorized charges on wireless bills. Therefore, the Commission also seeks comment on whether it should extend any similar protections to wireless consumers.

These proposed rules may necessitate that some common carriers make changes to their existing billing formats and/or disclosure materials. For example, to provide the required contact information on their bills may necessitate changes to billing formats. However, some carriers may be in compliance with many of these requirements and require no additional compliance efforts.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In the NPRM, the Commission seeks comment on ways to minimize the economic impact on carriers to comply with the proposed rules. For example, it seeks comment on establishing timeframes that will allow carriers sufficient opportunity to make any necessary changes to comply with any rules adopted in a cost efficient manner. The Commission also seeks comment on how to alleviate burdens on small carriers. It seeks guidance on whether the proposed rules should be limited to wireline service or whether there are justifications to extend those safeguards to wireless service. Finally, it seeks comment on an extensive cost and benefit analysis to determine the overall impact on consumers and industry of the proposed rules.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Initial Paperwork Reduction Act of 1995

The NPRM seeks comment on a potential new or revised information collection requirement or may result in a new or revised information collection requirement. If the Commission adopts any new or revised information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks-comment-on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Ordering Clauses

Pursuant to the authority contained in sections 1–2, 4, 201, 301, 303, 332, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151–152, 154, 201, 301, 303, 332, and 403, the Notice of Proposed Rulemaking *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620 unless otherwise noted.

2. Section 64.2400 is amended by revising paragraph (b) to read as follows:

§ 64.2400 Purpose and scope.

(a) * * *

(b) These rules shall apply to all telecommunications common carriers, except that §§ 64.2401(a)(2), 64.2401(c), and 64.2401(f) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a future rulemaking.

3. Section 64.2401 is amended by revising paragraphs (a)(2) and (d) and by adding new paragraph (f) to read as follows:

§ 64.2401 Truth-in-Billing Requirements.

(a) * * *

(2) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. Where charges for one or more service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section separate from all carrier charges.

* * * * *

(d) *Clear and conspicuous disclosure of inquiry and complaint contacts.*

(1) Telephone bills must contain clear and conspicuous disclosure of any information that the subscriber may need to make inquiries about or contest charges on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf.

(2) Where the subscriber does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or the Internet, the common carrier may comply with these

billing disclosure requirements by providing on the bill an e-mail or Web site address. Each carrier must make a business address available upon request from a consumer.

(3) Telephone bills and carrier Web sites must clearly and conspicuously state that the subscriber may submit inquiries and complaints to the Federal Communications Commission, and provide the telephone number, Web site address, and, on the carrier's Web site, a direct link to the webpage for filing such complaints. That information must be updated as necessary to ensure that it remains current and accurate.

* * * * *

(f) *Blocking of third-party charges.* Common carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each telephone bill, and on each carrier's Web site.

[FR Doc. 2011–21547 Filed 8–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–140, RM–11638; DA 11–1413]

Television Broadcasting Services; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Gray Television Licensee, LLC ("Gray"), the licensee of station WJHG–TV, channel 7, Panama City, Florida, requesting the substitution of channel 18 for channel 7 at Panama City. WJHG's viewers continue to experience problems receiving the station's VHF channel 7 digital broadcasts despite two power increases since it began operations on digital channel 7. Gray states that the best solution to resolve the majority of viewers reception problems is to move to a UHF channel, which serves the public interest by resolving over-the-air reception problems in certain areas of WJHG's predicted service areas.

DATES: Comments must be filed on or before September 22, 2011, and reply comments on or before October 7, 2011.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein, LLP, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–140, adopted August 15, 2011, and released August 17, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida is amended by removing channel 7 and adding channel 18 at Panama City.

[FR Doc. 2011–21544 Filed 8–22–11; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 76, No. 163
Tuesday, August 23, 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

August 18, 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) 720–8681.

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.

Rural Utilities Service

Title: 7 CFR Part 1738, Rural Broadband Loan and Loan Guarantee.

OMB Control Number: 0572–0130.

Summary of Collection: Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), provides loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in State and territories of the United States. The regulation prescribes the types of loans available, facilities financed and eligible applicants, as well as minimum credit support requirements considered for a loan. In addition, Title VI of the RE Act requires that Rural Utilities Service (RUS) make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed.

Need and Use of the Information: RUS will collect information to determine whether an applicant's eligibility to borrow from RUS under the terms of the RE Act and that the applicant complies with statutory, regulatory and administrative eligibility requirements for loan assistance. RUS will use the information to determine that the Government's security for loans made are reasonable, adequate and that the loans will be repaid within the time agreed.

Description of Respondents: Business or other for-profit; Not-tor-profit institutions.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,545.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–21515 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0084]

Notice of Request for Reinstatement of an Information Collection; National Animal Health Monitoring System; Swine 2012 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection to support the National Animal Health Monitoring System's Swine 2012 Study.

DATES: We will consider all comments that we receive on or before October 24, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0084-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0084* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 6902817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Swine 2012 Study, contact Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs.

Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Swine 2012 Study.

OMB Number: 0579–0315.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is authorized, among other things, to protect the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS would like to reinstate the Swine Study which will be used to:

- Describe current U.S. swine production practices including general management practices, housing practices, productivity, disease prevention, and mortality for five phases of production: gestation, farrowing, nursery, grow/finish, and wean-to-finish;
- Describe trends in swine health and management practices;
- Determine the prevalence and associated risk factors for select respiratory, neurologic, gastrointestinal, systemic, and food-borne pathogens found in weaned market hogs;
- Describe antibiotic usage patterns in weaned market hogs to control and treat disease and promote growth;
- Evaluate presence of or exposure to select pathogens and characterize isolated organisms from the collection of biological specimens; and
- Estimate the economic cost of a selected respiratory, neurologic, gastrointestinal, systemic, or food-borne pathogen found in commercial swine herds.

The Swine 2012 Study will consist of a screener questionnaire, several on-farm questionnaires, and biologic sampling. All of these activities will be administered by National Agricultural Statistics Service, USDA, designated data collectors. The information collected through the Swine 2012 Study will be analyzed and used to:

- Direct producer education;
- Identify research gaps;
- Facilitate education of future producers and veterinarians;
- Assess quality assurance programs; and
- Help with policy formation.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 2 years.

The purpose of this notice is to solicit comments from the public (as well as agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.4104183 hours per response.

Respondents: Swine producers.

Estimated annual number of respondents: 24,380.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 24,380.

Estimated total annual burden on respondents: 10,006 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21516 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pennington County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pennington County Recource Advisory Committee will meet in Rapid City, SD. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review and make recommendations for approval of remaining project proposals.

DATES: The meeting will be held September 13, 2011, at 5 p.m.

ADDRESSES: The meeting will be held at the Mystic Ranger District Office at 8221 South Highway 16. Written comments should be sent to Robert J. Thompson, 8221 South Highway 16, Rapid City, SD 57702. Comments may also be sent via e-mail to *rjthompson@fs.fed.us*, or via facsimile to 605–343–7134.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mystic Ranger District office. Visitors are encouraged to call ahead at 605–343–1567 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robert J. Thompson, District Ranger, Mystic Ranger District, 605–343–1567.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Meetings are open to the public. The following business will be conducted: review and make recommendations for approval of remaining project proposals.

Dated: August 16, 2011.

Dan S. Dallas,

Acting Forest Supervisor.

[FR Doc. 2011–21478 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS

State Technical Guide specifically in the following practice standards: #328, Conservation Crop Rotation, #329, Residue and Tillage Management No Till/Strip Till/Direct Seed, #344, Residue Management, Seasonal, #345, Residue and Tillage Management Mulch Till, #346, Residue Management, Ridge Till, #391, Riparian Forest Buffer, #422, Hedgerow Planting, #472, Access Control, #595, Integrated Pest Management, #612, Tree/Shrub Establishment, and #666, Forest Stand Improvement. These practices will be used to plan and install conservation practices.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: July 21, 2011.

W. Ray Dorsett,

Acting State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 2011–21468 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2011–0018]

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Dam or Pond Removal (Code 403), Dry Hydrant (Code 432), Feed Management (Code 592), Fishpond Management (Code 399), Land Clearing (Code 460), Livestock Pipeline (Code 516), Pond Sealing or Lining, Flexible Membrane (Code 521A), Fuel Break (Code 383), Stream Crossing (Code 578), and Subsurface Drain (Code 606).

NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective August 23, 2011.

Comment Date: Submit comments on or before September 22, 2011. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

ADDRESSES: Comments should be submitted, identified by Docket Number NRCS–2011–0018, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Public.comments@wdc.usda.gov*. Include Docket Number NRCS–2011–0018 or "comment on practice standards" in the subject line of the message.
- Mail: Comment Submissions, Attention: Anetra L. Harbor, Policy Analyst, Resource Economics, Analysis and Policy Division, Department of Agriculture, Natural Resources Conservation Service, George Washington Carver Center, 5601 Sunnyside Ave, Room 1–1112D, Beltsville, Maryland 20705.

All comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/*. Requests for paper versions or inquiries may be directed to Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: *http://www.nrcs.usda.gov/technical/Standards/nhcp.html*. To aid in this comparison, following are highlights of the proposed revisions to each standard:

Dam or Pond Removal (Code 403)—This is a new conservation practice standard for the purpose of removing existing dams or ponds.

Dry Hydrant (Code 432)—The Criteria section was clarified, Plans and Specification section added a list of items to include, and references were added.

Feed Management (Code 592)—The units changed from Animal Units (AUs) or Number to only AUs. The Purpose changed to include pathogen, odor, particulate matter, and greenhouse gas mitigation. Additions to Conditions Where Practice Applies, Criteria, Considerations, Operations and Maintenance, and References were made to support the change in Purpose.

Fishpond Management (Code 399)—The Definition was changed. Two issues previously included under "Considerations" have been moved to the "Criteria" section and additional action was added to the "Operation and Maintenance" section.

Fuel Break (Code 383)—Only minor edits are being proposed.

Land Clearing (Code 460)—The purpose was rewritten. Criteria was added for soil quality and water quality.

Livestock Pipeline (Code 516)—The title changed from "Pipeline" to "Livestock Pipeline." Revised Criteria and removed material specifications; expanded Considerations; revised Plans and Specifications; and revised Operation and Maintenance.

Pond Sealing or Lining, Flexible Membrane (Code 521A)—The material requirements have been revised to conform to industry-wide practice and to the most current versions of accepted generic standards, such as ASTM and other industry standards.

Stream Crossing (Code 578)—Criteria include more details related to passage of aquatic organisms and hydraulic criteria.

Subsurface Drain (Code 606)—Revised Purposes; expanded Conditions Where Practice Applies; revised Criteria; expanded Considerations; added Operation and Maintenance; and added References

Signed this 28th day of July, 2011, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2011–21467 Filed 8–22–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Virginia Modified Pound Net Leader Inspection Program.

OMB Control Number: 0648–0559.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 19.

Average Hours per Response: Telephone calls, 5 minutes; inspection meetings, 1 hour.

Burden Hours: 70.

Needs and Uses: This action would continue an inspection program for modified pound net leaders in the Virginia waters of the mainstem Chesapeake Bay. The pound net fishermen must call the National Marine Fisheries Service (NMFS) to arrange for a meeting. At the meeting, they must allow for the inspection of gear to ensure the modified leader meets the definition of a modified pound net leader, as described in the regulations (50 CFR 222.102). This inspection program is necessary to provide fishermen with the insurance that their leaders meet the regulatory definition of a modified pound net leader before setting their gear, provide managers with the knowledge that the offshore leaders in a portion of the Virginia Chesapeake Bay are configured in a sea turtle-safe manner, and aid in enforcement efforts.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21534 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 23, 2011.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or Jennifer Meek, at (202) 482–0238 or (202) 482–2778, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe ("circular welded pipe") from the Republic of Korea ("Korea") for the period November 1, 2009, through October 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

In accordance with 19 CFR 351.213(b), on November 30, 2010, Wheatland Tube Company ("Wheatland") and United States Steel Corporation ("U.S. Steel"), manufacturers of the domestic like product, timely requested an administrative review. Wheatland requested that the Department of Commerce (the "Department") conduct an administrative review of the following producers and/or exporters of the subject merchandise: SeAH Steel Corporation ("SeAH"); Hyundai HYSCO ("HYSCO"); Husteel Co., Ltd. ("Husteel"); Nexteel Co., Ltd. ("Nexteel"); Kumkang Industrial Co., Ltd. ("Kumkang"); and Dongbu Steel Co., Ltd ("Dongbu"). U.S. Steel requested the Department conduct an administrative review of the following producers of subject merchandise: SeAH; HYSCO; Husteel; Nexteel; Kumkang; and A–JU Besteel Co., Ltd. ("Besteel"). On the same day, SeAH and HYSCO both separately requested the Department conduct an administrative review of their respective companies.

On December 28, 2010, the Department initiated an administrative review covering the period November 1, 2009, through October 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010).

Wheatland withdrew its request for a review of Husteel, Nexteel, Kumkang, and Dongbu on July 13, 2011. U.S. Steel also withdrew its request for a review of Husteel, Nexteel, Kumkang, and Besteel on July 13, 2011. Wheatland and U.S.

Steel are the only parties to have requested reviews of Husteel, Nexteel, and Kumkang; Wheatland is the only party to have requested a review of Dongbu, and U.S. Steel is the only party to have requested a review of Besteel.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department may extend this deadline if it determines that it is reasonable to do so. Although Wheatland and U.S. Steel withdrew their respective requests for Husteel, Nexteel, Kumkang, Dongbu, and Besteel after the 90-day period, the Department has not, to date, dedicated extensive time and resources to this review, only having recently issued supplemental questionnaires to SeAH and HYSCO. Therefore, in response to the requests by Wheatland and U.S. Steel, the Department hereby rescinds the administrative review for the period November 1, 2009, through October 31, 2010, for Husteel, Nexteel, Kumkang, Dongbu, and Besteel.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of partial rescission of administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protectiveorder ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: August 16, 2011.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–21393 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 24, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rich Malinowski, (727) 824–5305 or *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) Southeast Region manages the United States fisheries of the exclusive economic zone (EEZ) off the South Atlantic, Caribbean, and Gulf of Mexico under the Fishery Management Plans (FMPs) for each Region. The Regional Fishery Management Councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations implementing the FMPs that have reporting requirements are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requires that all permitted fishing vessels must mark their vessel with the official identification number or some form of identification. A vessel's official number, under most regulations, is required to be displayed on the port and starboard sides of the deckhouse or hull, and weather deck. The official number and color code identifies each vessel and should be visible at distances at sea and in the air. These markings provide law enforcement personnel with a means to monitor fishing, at-sea processing, and other related activities, to ascertain whether the vessel's observed activities are in accordance with those authorized for that vessel. The identifying number is used by NMFS, the United States Coast Guard (USCG) and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement.

II. Method of Collection

Numbers are painted directly on the vessels.

III. Data

OMB Control Number: 0648–0358.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 9,774.

Estimated Total Annual Burden Hours: 7,331 hours.

Estimated Total Annual Cost to Public: $293,220.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21530 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Shipboard Observation Form for Floating Marine Debris

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 24, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Carey Morishige, (808) 694–3936, *Carey.Morishige@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

This data collection project will be coordinated by James Callahan (private citizen) with assistance from the NOAA Marine Debris Program, recreational sailors (respondents), non-government organizations (respondents) as well as numerous experts on marine debris observations at sea. The Shipboard Observation Form for Floating Marine Debris was created based on methods used in studies of floating marine debris by established researchers, previous shipboard observational studies conducted at sea by NOAA, and the experience and input of recreational sailors. The goal of this form is to be able to calculate the density of marine debris within an area of a known size. Additionally, this form will help collect data on potential marine debris resulting from the March 2011 Japan tsunami in order to better model movement of the debris as well as prepare (as needed) for debris arrival to areas around the Pacific. This form may be used to collect data on floating marine debris in any water body.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households; not-for profit institutions.

Estimated Number of Respondents: 60.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21533 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA654

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Review Workshop for Gulf of Mexico Menhaden and Gulf of Mexico and South Atlantic Yellowtail Snapper

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

ACTION: Notice of SEDAR 27 Review Workshop for Gulf of Mexico menhaden and Gulf of Mexico and South Atlantic yellowtail snapper.

SUMMARY: The technical stock assessments of the Gulf of Mexico stock of menhaden and the southeast U.S. stocks of yellowtail snapper will be reviewed during the Review Workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The Review Workshop will take place November 1–4, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Review Workshop will be held at Florida Wildlife Research Institute, 100 8th Avenue SE., St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; (843) 571–4366; *e-mail: Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and

Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are usually appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, Fisheries Commissions, and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies. Additionally, SEDAR Cooperators may request a SEDAR Review of an assessment produced outside of the standard SEDAR workshop process.

SEDAR 27 Review Workshop Schedule

November 1–4, 2011; SEDAR 27 Review Workshop,

November 1, 2011: 9 a.m.–8 p.m.; November 2–3, 2011: 8 a.m.–8 p.m.; November 4, 2011: 8 a.m.–12 p.m.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

The Review Workshop is an independent peer review of the assessment developed during the assessment process, which may include Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: August 18, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–21542 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA651

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel on September 12, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, September 12, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, 225 McClellan Highway, East Boston, MA 02128; *telephone:* (617) 569–5250; *fax:* (617) 569–5159.

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 Advisory Panel will make recommendations for the Scallop Committee to consider related to Framework 23 to the Scallop Fishery Management Plan (FMP). Framework 23 is considering alternatives related to four specific issues: (1) Potentially require a turtle deflector dredge for scallop dredge vessels; (2) revise the yellowtail flounder accountability measures (AMs) proposed in Amendment 15; (3) possibly modify how catch in state waters is accounted for in both the limited access general category management program for the Northern Gulf of Maine (NGOM) area and the limited access general category IFQ fishery; and (4) modify when a scallop vessel declares into the scallop fishery to improve fleet operations. The Panel will also discuss recommendations related to potential 2012 Council work priorities for the Scallop FMP. Other business may also be discussed at this meeting. For example, recent data suggest that windowpane flounder bycatch in the scallop fishery increased dramatically in 2010. The Scallop advisors may discuss possible reasons why and brainstorm recommendations for potential accountability measures if the Council decides to allocate a sub-ACL of windowpane flounder to the scallop fishery in a future action under the Groundfish FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 18, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–21540 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA655

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) ad hoc groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a conference call to continue the periodic review of groundfish Essential Fish Habitat (EFH).

DATES: The conference call will be held Friday, September 9, 2011 from 9 a.m. to 11 a.m.

ADDRESSES: The meeting will be held via conference call, with a listening station provided at the Pacific Council Office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; *telephone:* (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Council; *telephone:* (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review progress and interim products for the groundfish EFH periodic review. Recommendations are tentatively scheduled to be presented to the Pacific Council at the April, 2012 Council meeting in Seattle, WA. The EFHRC will meet again on October 6, 2011, in Portland, OR.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 18, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–21543 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA653

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee on September 13, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, September 13, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, 225 McClellan Highway, East Boston, MA 02128; *telephone:* (617) 569–5250; *fax:* (617) 569–5159.

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 Committee will review input from the Scallop Plan Development Team (PDT) and the Scallop Advisory Panel related to Framework 23 to the Scallop Fishery Management Plan (FMP). The Committee will identify preferred alternatives for the full Council to consider at the final meeting for Framework 23 being held on September 26–29, 2011 in Danvers, MA. The Committee will also discuss recommendations related to potential 2012 Council work priorities for the Scallop FMP. Other business may also be discussed at this meeting. Specifically, the Scallop Committee may discuss potential accountability measures for bycatch of Southern New England (SNE) windowpane flounder in the event that the Council decides to allocate a sub-ACL of windowpane flounder to the scallop fishery in a future action under the Groundfish FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 18, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–21541 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA–DR Agreement")

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to remove a product currently on Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* February 20, 2012.

SUMMARY: The Committee for the Implementation of Textile Agreements ("CITA") has determined that an acceptable substitute for certain compacted, plied, ring spun cotton yarns, as specified below, is available in the CAFTA–DR countries in commercial quantities in a timely manner. The product, which is currently on the list in Annex 3.25 of the CAFTA–DR

Agreement in unrestricted quantities, will be removed, effective 180 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under "Approved Requests," Reference number: 156.2011.07.20.Yarn. ParkdaleMillsandBuhlerQualityYarns.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA–DR Implementation Act"), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic–Central America–United States Free Trade Agreement*, 73 FR 53200 (September 15, 2008)) ("CITA's procedures").

On July 20, 2011, the Chairman of CITA received a request from Parkdale Mills and Buhler Quality Yarns for a Commercial Availability determination to remove or restrict ("Request") certain compacted, plied, ring spun cotton yarns, currently on Annex 3.25. Parkdale Mills and Buhler Quality Yarns offered to supply yarns substitutable for the specified yarns and provided documentation demonstrating their ability to supply commercial quantities in a timely manner. On July 22, 2011, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response to the Request ("Response") must be submitted by August 3, 2011, and any Rebuttal Comments to a Response ("Rebuttal") must be submitted by August 9, 2011, in accordance with Sections 6, 7 and 9 of CITA's procedures. No interested entity submitted a Response advising CITA of its objection to the Request.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, Section 8(a) and (b), and Section 9(c)(1) of CITA's procedures, as no interested entity submitted a Response objecting to the Request, CITA has determined to remove the subject product from Annex 3.25. Pursuant to Section 9(c)(3)(iii)(A), textile and apparel articles containing the subject product are not to be treated as originating in a CAFTA–DR country if the subject product is obtained from non-CAFTA–DR sources, effective for goods entered into the United States on or after 180 calendar days after the date of publication of this notice. A revised list in Annex 3.25, noting the effective date of the removal of the subject product, has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain Compacted, Plied, Ring Spun Cotton Yarns

Compacted, plied, ring spun cotton yarns, with yarn counts in the range from 42 to 102 metric, classified in subheadings 5205.42.0020, 5205.43.0020, 5205.44.0020, 5205.46.0020, and 5205.47.0020 of the Harmonized Tariff Schedule of the United States (HTSUS)

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2011–21561 Filed 8–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Open Meeting Notice; Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA), Department of Defense (DoD).

ACTION: Open meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Advisory Council on Dependents' Education will take place.

DATES: Tuesday, December 13, 2011, 8 a.m. to 12 p.m., Eastern Standard Time.

ADDRESSES: 4040 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Schrankel, 4040 North Fairfax Drive, Arlington, VA 22203, at (703) 588–3109, or *Steve.Schrankel@hq.dodea.edu.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense.

Agenda: The meeting agenda will reflect current DoDDS schools operational status, educational practices, and other educational matters that come before the Council. Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Dr. Schrankel at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Advisory Council on Dependents' Education about its mission and functions. Written

statements may be submitted at any time or in response to the stated agendas of the planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Advisory Council on Dependents' Education, Dr. Patrick A. Dworakowski, 4040 North Fairfax Drive, Arlington, VA 22203; *Patrick.Dworakowski@hq.dodea.edu*. Statements being submitted in response to the agendas mentioned in this notice must be received by the DFO at the address listed above at least fourteen calendar days prior to the meeting, which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Council on Dependents' Education until its next meeting.

The DFO will review all timely submissions with the Advisory Council on Dependents' Education Chairpersons and ensure they are provided to all members of the Advisory Council on Dependents' Education before the meeting that is the subject of this notice. Oral Statements by the Public to the Membership: Pursuant to 41 CFR 102–3.140(d), time will be allotted for public comments to the Advisory Council on Dependents' Education. Individual comments will be limited to a maximum of five minutes duration. The total time allotted for public comments will not exceed thirty minutes.

Dated: August 17, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–21470 Filed 8–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Notice of Advisory Committee Closed Meeting; U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces the following closed meeting notice pertaining to the following federal advisory committee: U.S. Strategic Command Strategic Advisory Group.

DATES: November 1, 2011, from 8 a.m. to 5 p.m. and November 2, 2011, from 8 a.m. to 11:30 a.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Blvd, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda

Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General C. Robert Kehler, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*. Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: August 17, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–21521 Filed 8–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, September 20, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: August 18, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–21483 Filed 8–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, September 6, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: August 18, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 2011–21482 Filed 8–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Is Given of the Names of Members of a Performance Review Board for the Department of the Air Force

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Air Force.

DATES: *Effective Date:* November 7, 2011.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) (1–5), the Department of the Air Force (AF) announces the appointment of members to the AF's Senior Executive Service (SES) Pay Pool and Performance Review Board (PRB). Appointments are made by the authorizing official. Each board member shall review and evaluate performance scores provided by the SES' immediate supervisor. Performance standards must be applied consistently across the U.S. Air Force. The board will make recommendations to the appointing authority or rating official relative to the performance of the executive. The members of the 2011 Performance Review Board for the U.S. Air Force are:

1. Board President—Gen. Shelton, Commander, Air Force Space Command;

2. Lt. Gen. Lord—Chief, Warfighting Integration and Chief Information Officer, SECAF;

3. Lt. Gen. Helms—Commander, Fourteenth Air Force;

4. Mr. Corsi, Assistant Deputy Chief of Staff for Manpower and Personnel;

5. Ms. Miller, Assistant Deputy Chief of Staff G–4 (Army);

6. Mr. Williams, Director, Defense Contract Management Agency;

7. Ms. Roby, Deputy Assistant Secretary of Defense (Resources);

8. Ms. Zardokiewicz, Principal Deputy Assistant Secretary, Financial Management;

9. Mr. McMillin, Deputy Chief of Staff for Warfighting Integration and Deputy CIO;

10. Ms. Cannon, Deputy General Counsel;

11. Ms. Rooney, Director, Intelligence Systems Support Office;

12. Mr. Peterson, Director, Air Force Financial Services Center;

13. Mr. Dumm, Director, ISR Plans and Resources, Deputy Chief of Staff, Intelligence, Surveillance and Reconnaissance.

Additionally, all career status Air Force Tier 3 SES members not included in the above list are eligible to serve on the 2011 Performance Review Board and are hereby nominated for inclusion on an ad hoc basis in the event of absence(s).

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms. Erin Moore, Chief, Sustainment Division, Senior Executive Management, AF/DPSS, 1040 Air Force Pentagon, Washington, DC 20330–1040 (Ph: 703–695–7677; or via e-mail at *erin.moore@pentagon.af.mil.*).

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. 2011–21469 Filed 8–22–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities

AGENCY: U. S. Department of Education, Office of Special Education and Rehabilitative Services, Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities.

ACTION: Notice of an Open Meeting.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10 (a) (2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: *Open Meeting:* September 8–9, 2011.

Time: Sept. 8, 2011: The open meeting will run from 8:30 a.m.–5 p.m.

Sept. 9, 2011: The open meeting will run from 8:30 a.m.–4 p.m.

ADDRESSES: The Madison Building, Library of Congress, Room 408, 101 Independence Avenue, SE., Washington, DC 20599–6000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; telephone: (202) 245–7642, fax: 202–245–7638.

SUPPLEMENTARY INFORMATION: The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (the Commission) is established under Section 772 of the Higher Education Opportunity Act, Public Law 110–315, dated August 14, 2008. The Commission is established to conduct a comprehensive study, which will—(I) "assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely

delivery and quality of accessible instructional materials for postsecondary students with print disabilities, as well as the effective use of such materials by faculty and staff; and (II) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a time frame comparable to the availability of instructional materials for postsecondary nondisabled students."

In making recommendations for the study, "the Commission shall consider—(I) How students with print disabilities may obtain instructional materials in accessible formats within a time frame comparable to the availability of instructional materials for nondisabled students; and to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students; (II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in Section 674(e)(3) of the Individuals with Disabilities Education Act, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students; (III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network; (IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education; (V) solutions utilizing universal design; and (VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats."

The Commission will meet in open session on Thursday and Friday, and will review and discuss the final draft of the Commission's report to the Secretary and Congress.

Detailed minutes of the meeting and hearing, will be available to the public within 14 days of the meeting. Records are kept of all Commission proceedings and are available for public inspection at the Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202, Monday–Friday during the hours of 8 a.m. to 4:30 p.m.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or material in alternative format) should notify Elizabeth Shook at (202) 245–7642, no later than September 2, 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.

Members of the public who would like to offer comments remotely may submit written comments to *AIMCommission@ed.gov* or by mail to Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, 550 12th St., SW., Room PCP–5113, Washington, DC 20202. All submissions will become part of the public record.

Members of the public also have the option of participating in the open meeting and public hearing remotely. Remote access will be provided via an internet webinar service utilizing VoiP (Voice Over Internet Protocol). For the September 8, 2011 portion of the meeting from 8:30 a.m.—5 p.m., the URL is *https://aimpsc.ilinc.com/join/yvfbsvw*. The login will be available to the public starting at 8 a.m. (Eastern). On September 9, the URL will be *https://aimpsc.ilinc.com/join/ccctxjw* for the Commission meeting from 8:30 a.m.—4:00 p.m., and the login will be open to public at 8 a.m. (Eastern).

Login information is also provided via the Commission's public listserv at *pscpublic@lists.cast.org* and posted at the following site: *http://www2.ed.gov/about/bdscomm/list/aim/index.html*.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/news/fedregister/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Alexa Posny,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2011–21559 Filed 8–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2011–BT–NOA–0053]

Faucets, Showerheads, Water Closets and Urinals

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for Information (RFI).

SUMMARY: On December 15, 2010, the U.S. Department of Energy (DOE or the Department) published a final rule waiving Federal preemption for energy conservation standards under 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of faucets, showerheads, water closets and urinals that is: (1) More stringent than Federal regulation concerning the water use or water efficiency for that same type or class of product; and (2) applicable to any sale or installation of all products in that particular type or class. In today's notice, DOE requests information from interested parties regarding: State activity with respect to efficiency standards for these products undertaken as a result of the December 15, 2010 final rule; market data; and any new or emerging water-efficient product designs or technologies for faucets, showerheads, water closets and urinals. DOE also requests information regarding any recent actions taken by the American Society of Mechanical Engineers (ASME)/American National Standards Institute (ANSI) toward amending its water efficiency standards for these products. Additional input and suggestions relevant to these products are also welcome.

DATES: Written comments and information are requested by October 24, 2011.

ADDRESSES: Interested persons may submit comments in writing, identified by docket number EERE–2011–BT–NOA–0053, by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail*: *PlumbingProducts-2011-NOA-0053@ee.doe.gov*. Include EERE–2011–BT–NOA–0053 in the subject line of the message.
- *Mail*: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Request for Information for Faucets, Showerheads, Water Closets and Urinals, EERE–2011–BT–NOA–0053,

1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.

• *Hand Delivery/Courier*: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

• *Instructions*: All submissions received must include the agency name and docket number.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20585–0121. Telephone: (202) 287–1317. E-mail: *Lucas.Adin@ee.doe.gov*.

In the Office of the General Counsel, Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–6111. E-mail: *Jennifer.Tiedeman@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Authority and Background

Title III, Part B of the Energy Policy and Conservation Act (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the faucets, showerheads, water closets and urinals that are the subjects of today's notice.[1] National standards for these products are based on the ASME/ANSI standards A112.18.1M, for showerheads and faucets, and A112.19.6, for water closets and urinals. 42 U.S.C. 6295(j), (k).

42 U.S.C. 6295(j)(3)(C) and 6295(k)(3)(C) require that, not later than six months after the conclusion of a five-year period during which the ASME/ANSI has not amended these faucet, showerhead, water closet or urinal standards to improve water efficiency, DOE must waive preemption for Federal standards under 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead, faucet, water closet or urinal if such State regulation meets the following two conditions. First, the State regulation concerning water use or water efficiency for a particular type or class of showerhead, faucet, water closet or urinal must be more stringent than the Federal regulation concerning water use or water efficiency for that same type or class of showerhead, faucet, water closet or urinal. 42 U.S.C. 6295(j)(3)(C)(i), 6295(k)(3)(C)(i). Second, the State regulation concerning the water use or water efficiency for a particular type or class of showerhead, faucet, water closet or urinal must be applicable to any sale or installation of all products in that particular type or class. 42 U.S.C. 6295(j)(3)(C)(ii), 6295(k)(3)(C)(ii).

ASME/ANSI last made a substantive amendment to its standards regarding the water efficiency requirements for showerheads and faucets on May 29, 1996 (ASME/ANSI A112.18.1M–1996), and for water closets and urinals on April 19, 1996 (ASME/ANSI A112.19.6–1995). Both of these standards were incorporated by reference into the Code of Federal Regulations in a final rule issued by DOE on March 18, 1998. 63 FR 13308. Because more than five years passed since ASME/ANSI last amended the water efficiency requirements in either of these standards, on December 15, 2010, DOE issued a final rule waiving 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of a particular type or class of showerhead, faucet, water closet or urinal that is both more stringent than the relevant Federal regulation and is applicable to any sale or installation or all products in that particular type or class, effective December 22, 2010.

In view of the above, DOE welcomes information from interested parties regarding activity since the issuance of the December 2010 final rule, and particularly, with respect to any State efficiency standards that are newly applicable or under development, market data regarding the prevalence of models that exceed the current Federal standards, and new or emerging water-efficient product designs or technologies for faucets, showerheads, water closets and urinals. DOE also requests information regarding any recent actions taken by the ASME/ANSI in furtherance of amending its water efficiency standards for these products. Additional input and suggestions relevant to these products are also welcome.

Public Participation

A. Submission of Information

DOE will accept information and data in response to this Request for Information as provided in the DATES section above. Information submitted to the Department by e-mail should be provided in WordPerfect, Microsoft Word, PDF, or text file format. Those responding should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments submitted to the Department by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles will be accepted. Comments submitted in response to this notice will become a matter of public record and will be made publicly available.

B. Issues on Which DOE Seeks Information

DOE is particularly interested in receiving comments from interested parties on the following issues:

(1) The development or establishment of water conservation standards for showerheads, faucets, water closets or urinals by States or their political subdivisions since DOE published the December 2010 final rule waiving Federal preemption for these products;

(2) Information regarding available models and sales of showerheads, faucets, water closets or urinals that exceed Federal energy conservation standards, and the amounts by which such models exceed the Federal standards;

(3) The existence and availability of new or emerging designs or technologies that (are expected to) improve the water efficiency of showerheads, faucets, water closets or urinals, and whether these designs or technologies (are expected to) have any impact on consumer utility and cost;

(4) Any recent actions that ASME/ANSI has taken in furtherance of amending its faucet, showerhead, water closet or urinal standards in order to improve the products' water efficiency;

(5) Assistance and resources available from stakeholders, States, local jurisdictions, and others.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

Issued in Washington, DC, on August 16, 2011.

Timothy Unruh,

Program Manager, Federal Energy Management Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–21494 Filed 8–22–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–588–001]

Commision Information Collection Activities [FERC–588]; Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (76 FR 30928, 05/27/2011) requesting public comments. FERC received no comments on the FERC–588 and has made this notation in its submission to OMB.

DATES: Comments in consideration of the collection of information are due September 22, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–588–001. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp*. eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp*. First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp*, to establish a username and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket No. IC11–588. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov*, telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–588, "Emergency Natural Gas Transportation, Sale and Exchange Transactions" (OMB No. 1902–0144), is used by the Commission to implement the statutory provisions of Sections 7(c) of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 USC 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 USC 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, Section 7(c) exempts from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies which provide the temporary assistance to the companies which are having the "emergency" must file the necessary information described in Part 284, Subpart I of the Commission's Regulations with the Commission so that it may determine if their assisting transaction/operation qualifies for exemption. The assisting company may or may not be under the Commission's jurisdiction and if their assisting actions qualify for the exemption, they will not become subject to the Commission's jurisdiction for such actions.

A report within forty-eight hours of the commencement of the transportation, sale or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

Action: The Commission is requesting a three-year approval of the collection of data. This is a mandatory information collection requirement.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
8	1	8	64

The estimated total cost to respondents is $4,381 (64 hours divided by 2,080 hours per employee per year times $142,372 per year average salary per employee = $4,381 (rounded)). The estimated annual cost per respondent is $548 (rounded).

The above hour and cost estimates are different than what was in the public notice published May 27, 2011. In that notice, the Commission erroneously used an average burden hours per response of 10 hours instead of 8 hours that is used here. By using the correct burden hour figure, the Commission notes that total annual burden and cost are less by 16 hours less and $1,095 as compared to the numbers in the May, 2011 notice. The corrected estimates are consistent with the burden estimates in the last submission to OMB.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Dated: August 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21453 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–583–001]

Commission Information Collection Activities (FERC–583); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a notice in the **Federal Register** (76 FR 34689, 06/14/2011) requesting public comments. FERC received no comments on the FERC–583 and is making this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 22, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0136 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC11–583–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC11–583–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC11–583 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–583, "Annual Kilowatt Generating Report (Annual Charges)" (OMB No. 1902–0136), is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA) (16 U.S.C. 803(e)), which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering part I of the FPA and for the use of United States dams. In addition, section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." The information is collected annually and used to determine the amounts of the annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements theses filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
FERC–583	459	1	2	918

Estimated cost burden to respondents is $62,835 (918 hours/2080 hours per year times $142,372 per year average per employee = $62,835). The cost per respondent is $137 (rounded).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: August 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21498 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14069–000]

Konohiki Hydro Power, Inc.; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14069–000.

c. *Date filed:* May 9, 2011, and supplemented August 4, 2011.

d. *Applicant:* Konohiki Hydro Power, Inc.

e. *Name of Project:* Puu Lua Hydropower Project.

f. *Location:* The proposed Puu Lua Hydropower Project would be located on the Koke'e ditch irrigation system in Kaua'i County, Hawaii. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mrs. Pamela Miller, Konohiki Hydro Power, Inc., P.O. Box 261, Anahola, HI 96703, phone (808) 634–8866.

i. *FERC Contact:* Robert Bell, (202) 502–6062, robert.bell@ferc.gov.

j. *Competing Application:* This application competes with Project No. 13875–000 filed October 22, 2010.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

l. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the *http://www.ferc.gov/docs-filing/efiling.asp*. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. *Description of Project:* The Puu Lua Hydropower Project has two developments that would consist of:

Upper Puu Lua Development

(1) A proposed powerhouse containing one proposed generating unit with an installed capacity of 2 megawatts; and (2) appurtenant facilities.

Lower Puu Lua Development

(1) A proposed powerhouse containing one proposed generating unit with an installed capacity of 3.3 megawatts; and (2) appurtenant facilities.

The applicant estimates the project would have an average annual generation of 32.49 gigawatt-hours.

n. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number, P–14069, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

o. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

p. All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21450 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–531–000]

Golden Triangle Storage, Inc.; Notice of Application

On August 5, 2011, Golden Triangle Storage, Inc. (Golden Triangle) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act and the Rules and Regulations of the Commission's Regulations for authority to construct and operate two new salt dome storage caverns at its existing storage site located in Jefferson County, Texas. Golden Triangle also seeks market based rates for its proposed expansion services, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Questions concerning this application may be directed to Kathryn L. McCoy, Golden Triangle Storage, Inc., 1200 Smith Street, Suite 900, Houston, TX 77002, (832) 397–8642 or John F. Harrington, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 662–4530.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.fere.gov*. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov*.using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: September 6, 2011.

Dated: August 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21452 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–533–000]

National Fuel Gas Supply Corporation; Notice of Application

Take notice that on August 15, 2011, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed an application in Docket No. CP11–533–000 pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, to reclassify an existing compression unit at the Beech Hill compressor station in Allegany County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TYY, contact (202) 502–8659.

National Fuel proposes to reclassify Compressor Unit 3 at its Beech Hill compressor station [1] from spare horsepower to use on a regular basis. National Fuel states that Compressor Unit 3 is a 2,850-horsepower unit that was originally installed to allow for proper scheduling of maintenance and for having spare capacity available in the event of an interruption in service by either of the two existing 2,750-horsepower units at the station. National Fuel also states that by using Compressor Unit 3 on a regular basis would allow it to spread the wear and tear among the three units, and thereby optimize operating conditions at the compressor station. National Fuel further states that there would be no modification to the existing horsepower, no additional horsepower would be installed, nor would there be any cost to reclassify Compressor Unit 3 in this proposal.

Any questions regarding Natural Fuel's application should be directed to David W. Reityz, Deputy General Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

[1] *See Penn-York Energy Corporation*, 38 FERC ¶ 61,135 (1987).

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 7, 2011.

Dated: August 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21496 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4281–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. Second Quarter 2011 Capital Budget Report.

Filed Date: 08/11/2011.
Accession Number: 20110811–5023.
Comment Date: 5 p.m. Eastern Time on Thursday, September 01, 2011.

Docket Numbers: ER11–4282–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: G298 Amended GIA to be effective 8/12/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5038.
Comment Date: 5 p.m. Eastern Time on Thursday, September 01, 2011.

Docket Numbers: ER11–4283–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Attachment S (APCO and SEGCO) Filing to be effective 1/1/2012.
Filed Date: 08/11/2011.
Accession Number: 20110811–5113.
Comment Date: 5 p.m. Eastern Time on Thursday, September 01, 2011.

Docket Numbers: ER11–4284–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii: FP&L Scherer Unit 4 TSA Amendment Filing (SEGCO Depreciation Rate Update) to be effective 1/1/2012.
Filed Date: 08/11/2011.
Accession Number: 20110811–5114.
Comment Date: 5 p.m. Eastern Time on Thursday, September 01, 2011.

Docket Numbers: ER11–4285–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii: JEA Scherer Unit 4 TSA Amendment Filing (SEGCO Depreciation Rate Update) to be effective 1/1/2012.
Filed Date: 08/11/2011.
Accession Number: 20110811–5115.
Comment Date: 5 p.m. Eastern Time on Thursday, September 01, 2011.

Docket Numbers: ER11–4286–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Modifications to APS Service Agreement Nos. 51741 and 308 to be effective 7/8/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5000.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4287–000
Applicants: Michigan Electric Transmission Company, LLC
Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii: Filing of Facilities Upgrade Agreement to be effective 10/12/2011.
Filed Date: 08/12/2011
Accession Number: 20110812–5034
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011

Docket Numbers: ER11–4288–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of Joint Pole Use Agreements to be effective 10/12/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5037.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4289–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35: OATT Service Agreement 172 (Baseline) to be effective 8/12/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5083.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4290–000.
Applicants: Milford Power Limited Partnership.
Description: Milford Power Limited Partnership submits tariff filing per 35: Revisions to Market-Based Rate Tariff of Milford Power Limited Partnership to be effective 8/13/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5117.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4291–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities Company submits tariff filing per 35.13(a)(2)(iii: 08_12_11 KU ARAs Errata to be effective 8/15/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5119.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4292–000.
Applicants: ANP Funding I, LLC.
Description: ANP Funding I, LLC submits tariff filing per 35: Revisions to Market-Based Rate Tariff of ANP Funding I, LLC to be effective 8/13/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5120.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4293–000.
Applicants: ANP Blackstone Energy Company, LLC.
Description: ANP Blackstone Energy Company, LLC submits tariff filing per 35: Revisions to Market-Based Rate Tariff of ANP Blackstone Energy Company, LLC to be effective 8/13/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5121.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4294–000.
Applicants: NV Energy, Inc.
Description: NV Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 10–00979 Amended and Restated LGIA to be effective 7/22/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5135.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4295–000.
Applicants: ANP Bellingham Energy Company, LLC.
Description: ANP Bellingham Energy Company, LLC submits tariff filing per 35: Revisions to Market-Based Rate Tariff of ANP Bellingham Energy Company, LLC to be effective 8/13/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5136.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4296–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of Electric Service Agreement to be effective 10/12/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5143.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4297–000.
Applicants: Armstrong Energy Limited Partnership, L.L.L.P.
Description: Armstrong Energy Limited Partnership, L.L.L.P. submits tariff filing per 35: Revisions to Market-Based Rate Tariff of Armstrong Energy Limited Partnership to be effective 8/13/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5149.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4298–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of Operation and Maintenance Agreement to be effective 10/12/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5151.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4299–000.
Applicants: Pleasants Energy, LLC.
Description: Pleasants Energy, LLC submits tariff filing per 35: Revisions to

Market-Based Rate Tariff of Pleasants Energy, LLC to be effective 8/13/2011.

Filed Date: 08/12/2011.

Accession Number: 20110812–5152.

Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4300–000.

Applicants: Calumet Energy Team, LLC.

Description: Calumet Energy Team, LLC submits tariff filing per 35: Revisions to Market-Based Rate Tariff of Calumet Energy Team, LLC to be effective 8/13/2011.

Filed Date: 08/12/2011.

Accession Number: 20110812–5153.

Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4301–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of Facilities Agreement to be effective 10/12/2011.

Filed Date: 08/12/2011.

Accession Number: 20110812–5154.

Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4302–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of Interconnection Agreement to be effective 10/12/2011.

Filed Date: 08/12/2011.

Accession Number: 20110812–5155.

Comment Date: 5 p.m. Eastern Time on Friday, September 02, 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: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21455 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2376–000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits tariff filing per 154.204: DPA Definition Changes to be effective 9/14/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5034.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2377–000.

Applicants: Gas Transmission Northwest LLC.

Description: Gas Transmission Northwest LLC submits Petition for Approval of Stipulation and Agreement of Settlement.

Filed Date: 08/12/2011.

Accession Number: 20110812–5208.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: RP11–2378–000.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corporation submits tariff filing per 154.402: 2011 Annual Charge Adjustment to be effective 10/1/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5039.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2379–000.

Applicants: PostRock KPC Pipeline, LLC.

Description: PostRock KPC Pipeline, LLC submits tariff filing per 154.313: KPC Lease Cost Adjustment/Removal of Lease Provisions to be effective 11/1/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5088.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2380–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Compliance with CP09–455–000 to be effective 9/30/2011.

Filed Date: 08/15/2011

Accession Number: 20110815–5121.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2381–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits tariff filing per 154.204: Negotiated Rates 2011–08–15 to be effective 8/16/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5122.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21464 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–128–000; Docket No. CP11–133–000]

National Fuel Gas Supply Corporation; Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Northern Access and Station 230C Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for National Fuel Gas Supply Corporation's (National Fuel) proposed Northern Access Project and Tennessee Gas Pipeline Company's (TGP) proposed Station 230C Project in the above referenced dockets. National Fuel and TGP request authorization to construct facilities in Pennsylvania and New York to provide an additional 320,000 dekatherms per day of natural gas to TransCanada Corporation. Because both

companies would construct their respective proposed facilities to provide these additional volumes, we analyzed them jointly in one EA.

The EA assesses the potential environmental effects of the construction and operation of National Fuel's and TGP's proposed projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

National Fuel's project includes the following facilities:

- A new East Aurora Compressor Station, totaling 4,470-horsepower (hp), and auxiliary facilities in Erie County, New York;
- Piping modifications at the existing Concord Compressor Station in Erie County, to permit bi-directional flow;
- Modifications to underground piping and valves at the existing East Eden Metering and Regulation facility in Erie County;
- Expansion of the Ellisburg Compressor Station with two new compressor units, totaling 9,470-hp, on an adjacent lot in Potter County, Pennsylvania; and
- A new Rose Lake Meter Station and auxiliary piping/facilities at the Ellisburg Compressor Station.

TGP's project consists of the following facility modifications at its existing Station 230C Compressor Station in Niagara County, New York:

- New Solar Centaur natural gas-fired turbines for compressor units A2 and A3 and restaging of centrifugal compressors for units A2, A3, and A4 for bi-directional flow;
- New station cooling equipment and discharge flow check meters and check valves along the existing 20- and 30-inch Niagara Spur Loop Line pipelines; and
- Modification to station piping and automation systems, and installation of yard valves to allow bi-directional flow.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before September 16, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP11–128–000 or CP11–133–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP11–128 or CP11–133). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Dated: August 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21451 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–515–000]

Millennium Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Minisink Compressor Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Minisink Compressor Project involving construction and operation of facilities by Millennium Pipeline Company, LLC (Millennium) in Minisink, New York. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on September 16, 2011.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we invite you to attend the public scoping meeting scheduled as follows: FERC Public Scoping Meeting, Minisink Compressor Project, September 6, 2011, 7 p.m., Minisink Town Hall, 20 Roy Smith Dr., Westtown, NY 10998.

The Commission staff will also attend Millennium's public open house on August 23, 2011, in Westtown, New York. Notice of this public open house was sent to all affected landowners by Millennium on August 11, 2011.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Millennium provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Millennium proposes to construct and operate one new compressor station in Minisink, New York. The Minisink Compressor Project would allow Millennium to increase natural gas deliveries to its existing interconnection with Algonquin Gas Transmission, LLC at Ramapo, New York, to approximately 675,000 dekatherms per day.

The project would consist of the following facilities:

- Two 6,130-horsepower natural gas-fired compressor units at the new Minisink Compressor Station;
- Approximately 1,090 feet of 36-inch-diameter pipeline for suction and discharge to the existing Millennium mainline; and
- Associated ancillary facilities.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would take place on a 10.5-acre plot entirely within a 74.3-acre parcel of land that is owned by Millennium. Following construction, 3.3 acres would be maintained permanently for operation of the Minisink Compressor Station.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before September 16, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project

[1] The appendices referenced in this notice are not being printed in the Federal Register. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

docket number (CP11–515–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister*." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own property or homes within a certain distance of the proposed compressor station site and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, CP11–515). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21497 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 606–027—California]

Pacific Gas and Electric Company; Notice of Availability of the Final Environmental Impact Statement for the Kilarc-Cow Creek Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application, filed March 12, 2009, requesting surrender of the Kilarc-Cow Creek Project (FERC No. 606) license. The project is located on Old Cow Creek, South Cow Creek, and tributaries in Shasta County, California. The Draft Environmental Impact Statement (DEIS) was issued for public comment on June 22, 2010, followed by two public meetings. Commission staff has prepared the Final Environmental Impact Statement (FEIS) for the project.

The FEIS contains staff's evaluation of the licensee's proposal and the alternatives for surrendering the license of the Kilarc-Cow Creek Project. The FEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the licensee, and Commission staff.

A copy of the FEIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The FEIS also may be viewed on the Commission's Web site at *http://www.ferc.gov*, under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact the environmental coordinator, CarLisa Linton-Peters at (202) 502–8416, or via e-mail at *carlisa.linton-peters@ferc.gov*.

Dated: August 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21449 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14211–000]

Rhode Island Department of Environmental Management; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 10, 2011, the Rhode Island Department of Environmental Management filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Elizabeth Webbing Hydroelectric Project to be located on the Blackstone River, in Central Falls, Providence County, Rhode Island. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing 10-foot-high, 156-foot-long granite masonry Elizabeth Webbing Dam with proposed 12-inch-high flashboards; (2) an existing 26-acre impoundment with a normal maximum water surface elevation of 34.9 feet (NGVD 1929); (3) an existing trashrack and 40-foot-wide, 39-foot-long headrace; (4) an existing 40-foot-wide, 70-foot-long powerhouse containing a 745-kilowatt turbine connected to a generator; (5) an existing tailrace; (6) proposed 400-foot-long, 5-kilovolt and 70-foot-long, 15-kilovolt transmission lines; and (7) appurtenant facilities. The project would have an estimated annual generation of 4,360 megawatt-hours.

Applicant Contact: Catherine Sparks, Chief, Division of Forest Environment, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI 02908; phone: (401) 222–4700.

FERC Contact: Brandon Cherry; phone: (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14211–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21448 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14243–000]

Lock+Hydro Friends Fund VII; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 4, 2011, Lock+Hydro Friends Fund VII, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers' (Corps) Shamokin Dam. The Shamokin Dam Project (project) would be located on the Susquehanna River, near the town of Shamokin Dam, in Snyder County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Two prefabricated concrete walls attached to the downstream side of the Corps' dam which would support one frame module; (2) the frame module would be 40 feet wide and weigh 0.65 million pounds and contain 6 generating units with a total combined capacity of 4.5 megawatts (MW); (3) a tailrace approximately 175 feet long, lined with riprap; (4) a new switchyard containing a transformer; and (5) a proposed 1.3-mile-long, 34.5-kilovolt (kV) transmission line connecting to an existing line. The proposed project would have an average annual generation of 25.64 gigawatt-hours, which would be sold to a local utility or the Regional Independent System Operator.

Applicant Contact: Mr. Wayne Krouse, Lock + Hydro Friends Fund VII, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x709.

FERC Contact: Tim Looney; phone: (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14243–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21495 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4754–004]

Herschel L. Webster; Revonda Amthor; Notice of Termination of Exemption by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 4754–004.

c. *Date Initiated:* August 16, 2011.

d. *Exemptee:* Herschel L. Webster/Revonda Amthor.

e. *Name and Location of Project:* The Webster Lake Project is located on White Creek near Cleveland, in White County, Georgia.

f. *Issued Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Mr. Herschel L. Webster, c/o Ms. Glenda Maher or Ms. Revonda Amthor, 245 Stephens Drive, Cleveland, GA 30528; phone (706) 865–4267.

h. *FERC Contact:* Diane M. Murray, (202) 502–8838, or *diane.murray@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–4754–004) on any documents or motions filed.

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (1) An earthfill dam approximately 339 feet long and 17 feet high with an ungated spillway about 150 feet long; (2) a reservoir of approximately 21 acres and a maximum storage capacity of approximately 171 acre-feet; (3) an approach channel approximately 1,000 feet long and 8 feet wide at the bottom; (4) a 3-foot-diameter, 355-foot-long steel penstock; (5) a powerhouse containing two generating units: Unit No. 1 consists of a 300-kW generator connected to a 190-kW turbine, and Unit No. 2 consists of a 200-kW generator connected to a 85-kW turbine; (6) a two-mile-long, 14.4-kV transmission line; and (7) appurtenant facilities.

k. *Description of Proceeding:* The exemptee is currently in violation of Standard Article 1 of its exemption granted on May 11, 1982 (19 FERC ¶62,223). Section 4.106 of the Commission's regulations, 18 CFR 4.106, provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not operated since 1996 and has been abandoned by the exemptee. By not operating the project as proposed and authorized, the exemptee is in violation of the terms and conditions of the exemption.

On February 15, 2006, the Commission staff sent the exemptee a letter concerning the non-operating status of its project and requested information on its future plans for the project or for the surrender of the exemption. The exemptee did not file a response. On November 29, 2006, the Commission staff again sent a letter stating that the Commission may consider the failure of the exemptee to repair the project as its intent to surrender the exemption. The exemptee did not file a response.

On June 25, 2009, Commission staff required the exemptee to file a plan to address non-compliance issues within 45 days and again informed the exemptee that the Commission may consider its failure to address the non-compliance issues as its intent to surrender the exemption. The exemptee failed to respond. On April 12, 2011, Commission staff informed the exemptee that it was in violation of the terms and conditions of the exemption. The Commission required the exemptee to show cause within 30 days why the exemption should not be revoked. The exemptee did not file a response. To date, the exemptee has failed to file the information requested by Commission staff and the project remains inoperative.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–4754) in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents*—Any filing must: (1) Bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works, which are the subject of the termination of exemption. A copy of any protest or

motion to intervene must be served upon each representative of the exemptee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: August 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21499 Filed 8–22–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9455–8]

State Program Requirements; Approval of Application for Program Revision to the National Pollutant Discharge Elimination System (NPDES) Program; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 11, 2011, the Regional Administrator for the Environmental Protection Agency, Region 10 (EPA), approved the application by the State of Alaska to revise Alaska's National Pollutant Discharge Elimination System (NPDES) program pursuant to section 402 of the Clean Water Act (CWA or "the Act"). The revised State program, called the Alaska Pollutant Discharge Elimination System (APDES), includes an implementation plan that transfers the administration of specific program components from EPA to the Alaska Department of Environmental Conservation (ADEC) in four phases. Phases I–III have been transferred from the EPA to ADEC. In March 2011, ADEC made a submission for approval for a one year extension of the transfer of Phase IV of the APDES program, which includes oil and gas, cooling water intakes and dischargers, munitions and all other remaining facilities not previously transferred in Phases I–III. The EPA approved the one year extension for Phase IV. Phase IV will transfer to ADEC four years from the date of program approval, or October 31, 2012. Upon approval of the program revision, the Regional Administrator notified the State and signed the modified Memorandum of Agreement (MOA) between EPA and ADEC. The EPA will suspend issuance of applicable NPDES permits in Alaska in accordance with the extension for transfer of NPDES program authority for Phase IV.

DATES: Pursuant to 40 CFR 123.62(b), the APDES program revision was approved and became effective on August 11, 2011.

FOR FURTHER INFORMATION CONTACT: To obtain further information or copies of related documents, contact Hanh Shaw, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Suite 900, Mail Stop OWW–130, Seattle, WA 98101–3140, (206) 553–0171, *shaw.hanh@epa.gov* or Theresa Svancara, *theresa.svancara@alaska.gov*, Alaska Department of Environmental Conservation, P.O. Box 111800, 410 Willoughby Avenue, Suite 303, Juneau, AK 99811–1800, (907) 465–5257, *theresa.svancara@alaska.gov*. The ADEC's modified program description, the modified MOA related to the approved APDES program revision and the EPA's responses to comments can be viewed and downloaded from the EPA Web site *http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/apdes* and from the ADEC Web site *http://www.dec.state.ak.us/water/npdes/index.htm*.

SUPPLEMENTARY INFORMATION: Section 402 of the CWA created the NPDES program under which the EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that the EPA may approve a State to administer an equivalent state NPDES program. The EPA approved the APDES program application on October 31, 2008. The APDES program application was described in the **Federal Register** (73 FR 34746) published on June 18, 2008. The approved program authorized ADEC to assume responsibility for the NPDES program in four phases over three years from the date of APDES program approval. ADEC currently has NPDES permit administration authority for Phases I–III. These three phases cover the following major components: Phase I includes domestic discharges (excluding the bio-solids program), timber harvesting, seafood processing facilities and hatcheries; Phase II includes federal facilities, stormwater program, pretreatment program, and miscellaneous non-domestic discharges; and Phase III includes mining. The original ADEC phasing schedule authorized the transfer of Phase IV three years from APDES program approval, or October 31, 2011. Phase IV components include oil and gas, cooling water intakes and dischargers, munitions, and all other remaining facilities not previously transferred in Phases I–III.

A. Scope of APDES Program Revision

ADEC proposed a delay of the Phase IV transfer for one year, or until October 31, 2012, by letter dated March 14, 2011. ADEC also submitted a modified APDES program description and a modified MOA related to the APDES program revision. The only changes proposed to the program description related to the one year extension for the transfer of the Phase IV program component and updating of the Phase IV permit list. The modifications incorporated the proposed one year extension of the Phase IV transfer.

The APDES program revision was described in the **Federal Register** (76 FR 28027) published on May 13, 2011. Notice of the program revision was published in two Alaska newspapers. A public comment period was held from May 13–June 27, 2011. A public hearing on the program revision was held in Anchorage, Alaska on June 13, 2011. Additionally, the EPA held government-to-government consultation teleconferences on April 26, 27 and 28, 2011 for interested tribes

B. Public Comments

The EPA received comments concerning the APDES program revision, including comments in support of the Phase IV extension. The EPA did not receive any comments urging the EPA to disapprove the requested program revision. One commenter did not support a time extension for any greater length of time. A Tribal association suggested that the EPA consider adopting stipulations related to jurisdiction issues and authorities of federally-recognized tribal governments in Alaska. All public comments are addressed in the EPA response to comments document dated August 2011, which can be viewed and downloaded from the EPA Web site *http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/apdes*.

C. Notice of Decision

I hereby provide public notice that the EPA has taken final action approving the APDES program revision extending

the Phase IV transfer date to October 31, 2012.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: August 16, 2011.

Dennis McLerran,

Regional Administrator, U.S. Environmental Protection, Region 10.

[FR Doc. 2011–21538 Filed 8–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0621; FRL–9455–5]

Access by EPA Contractors to Confidential Business Information (CBI) Related to the Greenhouse Gas Reporting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Atmospheric Programs plans to authorize the contractors named in this notice to access information that will be submitted to EPA under the Greenhouse Gas Reporting Program that may be designated or claimed as confidential business information. Contractor access to this information will begin on August 29, 2011.

DATES: EPA will accept comments on this Notice through August 29, 2011.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0621 by any of the following methods:

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

E-mail: MRR_Corrections@epa.gov. Include Docket ID No. EPA–HQ–OAR–2011–0621 in the subject line of the message.

Fax: (202) 566–9744.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA–HQ–OAR–2011–0621, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Hand/Courier 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–2011–0621. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR 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.*

SUPPLEMENTARY INFORMATION:

I. Background and Comment Information

A. Does this notice apply to me?

This notice is directed to the general public. However, this action may be of particular interest to parties subject to the requirements of 40 CFR part 98. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

1. Electronically

EPA has included a public docket for this *Federal Register* notice under Docket EPA–HQ–OAR–2011–0621.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

2. EPA Docket Center

Materials listed under Docket EPA–HQ–OAR–2011–0621 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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

1. Submitting CBI in Response to This Notice

Clearly mark the part or all of the comments that you claim to be CBI submitted in response to this notice. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify this Notice by docket number and other identifying information (*e.g.,* subject heading, **Federal Register** date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

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

Provide specific examples to illustrate your concerns and suggest alternatives. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the deadline identified in the preceding section titled **DATES.** To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information to Contractors

EPA's Office of Atmospheric Programs (OAP) has responsibility for protecting public health and the environment by addressing climate change, protecting the ozone layer, and improving regional air quality. In response to the FY2008 Consolidated Appropriations Act (H.R. 2764; Pub. L. 110–161), EPA created the Greenhouse Gas Reporting Program (GHGRP), 40 CFR part 98 (part 98), which requires reporting of greenhouse gas (GHG) data and other relevant information from large sources and suppliers in the United States. The purpose of part 98 is to collect accurate and timely GHG data to inform future policy decisions. Some of the information submitted is designated or claimed to be CBI. Such information is handled in accordance with EPA's regulations in 40 CFR part 2, subpart B and in accordance with EPA procedures that are consistent with those regulations.

EPA has, at times, determined that it is necessary to disclose to EPA contractors certain information that has been designated or claimed as CBI. When this occurs, the corresponding contract must address the appropriate use and handling of the information by the contractor. In every instance, the contractor must require its personnel who need access to information designated or claimed as CBI to sign written agreements before they are granted access to the data.

In accordance with 40 CFR 2.301(h), EPA has determined that the contractors, subcontractors, and grantees (collectively referred to as "contractors") listed below require access to data submitted to EPA under the GHGRP that is designated or claimed as CBI. EPA is providing notice and an opportunity to comment and is issuing this **Federal Register** notice to inform all reporters of information under part 98 that EPA plans to grant access to material that may be designated or claimed as CBI to the contractors identified below, as needed.

Under Contract Number GS–10F–0036K, Eastern Research Group, 110 Hartwell Avenue, Lexington, MA 02421, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP including, but not limited to, research on data elements for all subparts. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–067 Task Order 76, Eastern Research Group, 110 Hartwell Avenue, Lexington, MA 02421, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts H and FF. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–099 Task Order 19, Eastern Research Group, 2300 Wilson Boulevard, Suite 350, Arlington, VA 22201, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, supporting field inspections for any source category. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–068 Task Order 100, ICF International, 9300 Lee Highway, Fairfax, VA 22031, and its subcontractor, Advanced Resources International, 4501 Fairfax Drive, Suite 910, Arlington, VA 22203, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts PP, RR, and UU. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–068 Task Order 91, ICF International, 1725 I Street, NW., Suite 1000, Washington, DC 20006, and its subcontractors, Glew Engineering, 240 Pamela Drive, Mountain View, CA 94040, J Marks & Associates, L.L.C., 312 NE. Brockton Drive, Lee Summit, MO 64064, and Donald Wubbles, 105 S. Gregory Street, Urbana, IL 61801, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts F, I, T, DD, OO, QQ, and SS, as well as Best Available Monitoring Method (BAMM) petitions. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–068 Task Order 93, ICF International, 9300 Lee Highway, Fairfax, VA 22031, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts NN and P. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–068 Task Order 66, ICF International, 9300 Lee Highway, Fairfax, VA 22031, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subpart W, as well as BAMM petitions. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–069 Task Order 21, RTI International, PO Box 12194, 3040 Cornwallis Road,

Research Triangle Park, NC 27709, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts HH and TT. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–069 Task Order 28, RTI International, PO Box 12194, 3040 Cornwallis Road, Research Triangle Park, NC 27709, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP including, but not limited to, 40 CFR part 98, subparts L and O, as well as BAMM petitions. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–069 Task Order 29, RTI International, PO Box 12194, 3040 Cornwallis Road, Research Triangle Park, NC 27709, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts C, D, E, G, K, N, Q, R, S, U, V, X, Y, Z, AA, BB, CC, EE, GG, LL, and MM. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–070 Task Order 8, Science Applications International Corporation (SAIC), 1710 SAIC Drive, McLean, VA 22102, and its subcontractor, Federal Working Group, 508 Lincoln Avenue, Falls Church, VA 22046, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, information technology development and support for 40 CFR part 98. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–071 Task Order 13, SRA International, Inc., 652 Peter Jefferson Parkway, Suite 300, Charlottesville, VA 22911, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subpart C, as well as BAMM petitions. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–071 Task Order 15, SRA International, Inc., 4300 Fair Lakes Court, Fairfax, Virginia 22033, and its subcontractor, Rabbit Software, LLC, 1657 Old Brook Road, Charlottesville, VA 22901, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, verification of data submitted through the electronic-Greenhouse Gas Reporting Tool (e-GGRT). Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–064 Work Assignment No. 3–10, SRA International, Inc., 652 Peter Jefferson Parkway, Suite 300, Charlottesville, VA 22911, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, information technology and computer system development and support for 40 CFR part 98. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS–35F4381G Task Order 1659, CSC, 15000 Conference Center Drive, Chantilly, VA 20151, and its contractors, ITM Associates, Inc., 1700 Rockville Pike, Suite 350, Rockville, MD 20852, Excel Management Systems, 691 N. High Street, 2nd floor, Columbus, OH 43215, and KForce, 12010 Sunset Hill Road, Reston, VA 20190, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, maintenance of the e-GGRT server(s) and other information technology related efforts. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS–35F–4461G Task Order 1668, Science Applications International Corporation (SAIC), 10260 Campus Point Drive, San Diego, CA 92121, and its contractors, Federated IT, Inc., 1200 G Street, NW., Suite 800, Washington, DC 20005, Intervise Consultants, Inc., 10110 Molecular Drive, Suite 100, Rockville, MD 20850, and Premier Technical Services, 312 Main Street, Luray, VA 22835, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, maintenance of the e-GGRT server(s) and other information technology related efforts. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS–35F–4797H Task Order EP–G11D–00056, CGI, 12601 Fair Lakes Circle, Fairfax, VA 22033, and its subcontractors, FedConcepts, 101 Log Canoe Circle, Suite M, Stevensville, MD 21666, and Raytheon Company, 5700 Rivertech Court, Riverdale, MD 20737, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, maintenance of the e-GGRT server(s) and other information technology related efforts. Access to data, including information designated or claimed as CBI, will commence on August 29, 2011 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Parties who wish further information about this **Federal Register** notice or about OAP's disclosure of information designated or claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: August 17, 2011.

Elizabeth Craig,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2011–21562 Filed 8–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9455–4]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board usually meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. Section 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the states of Arizona, California, New Mexico and Texas; and tribal and private organizations with experience in environmental and infrastructure issues along the U.S.-Mexico border.

The purpose of the meeting is to continue discussion on the Board's 14th report, which is focusing on the environmental and economic benefits of renewable energy development in the border region. Panel discussions will take place on economic opportunities and community impacts in the U.S.-Mexico border region. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Thursday, September 8, from 8:30 a.m. (registration at 8 a.m.) to 6 p.m. The following day, Friday, September 9, the Board will meet from 8 a.m. until 2 p.m.

ADDRESSES: The meeting will be held at the Hotel Encanto de Las Cruces, 705 - South Telshor Blvd., Las Cruces, New Mexico 88011, *phone number:* 575–522–4300. The meeting is open to the public, with limited seating on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* 202–564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–564–2130 or by e-mail at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: August 10, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–21523 Filed 8–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and Request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 24, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judy Boley Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0207.

Title: Emergency Alert System (EAS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Governments; Non-profit entities.

Number of Respondents: 3,569,028 respondents; 3,569,028 responses.

Estimated Time per Response: .034–20 hours.

Frequency of Response: Recordkeeping requirements; reporting requirements; third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i) and 606.

Total Annual Burden: 82,008 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of confidentiality: The Commission will treat submissions pursuant to 47 CFR 11.61(a)(3) as confidential.

Needs and Uses: On March 10, 2010, OMB authorized the collection of information set forth in the Second FNPRM in EB Docket No. 04–296, FCC 09–10. Specifically, OMB authorized the Commission to require entities required to participate in EAS (EAS Participants) to gather and submit the following

information on the operation of their EAS equipment during a national test of the EAS: (1) Whether they received the alert message during the designated test; (2) whether they retransmitted the alert; and (3) if they were not able to receive and/or transmit the alert, their 'best effort' diagnostic analysis regarding the cause or causes for such failure. OMB also authorized the Commission to require EAS Participants to provide it with the date/time of receipt of the EAN message by all stations; and the date/time of receipt of the EAT message by all stations, a description of their station identification and level of designation (PEP, LP–1, etc.); who they were monitoring at the time of the test, and the make and model number of the EAS equipment that they utilized.

In the Third Report and Order in EB Docket No. 04–296, FCC 09–10, the Commission adopted the foregoing rule requirements. In addition, the Commission decided that test data will be presumed confidential and disclosure of test data will be limited to FEMA, NWS and EOP at the federal level. At the State level, test data will be made available only to State government emergency management agencies that have confidential treatment protections at least equal to FOIA. The process by which these agencies would receive test data will comport with those used to provide access to the Commission's NORS and DIRS data. We seek comment on this revision of the approved collection.

In the Third Report and Order, the Commission also indicated that it would establish a voluntary electronic reporting system that EAS test participants may use as part of their participation in the national EAS test. The Commission noted that using this system, EAS test participants could input the same information that they were already required to file manually via a web-based interface into a confidential database that the Commission would use to monitor and assess the test. This information would include identifying information such as station call letters, license identification number, geographic coordinates, EAS assignment (LP, NP, *etc*), EAS monitoring assignment, as well as a 24/7 emergency contact for the EAS Participant. The only difference, other than the electronic nature of the filing, would the the timing of the collection. On the day of the test, EAS Test participants would be able to input immediate test results, (*e.g.*, was the EAN received and did it pass) into a web-based interface. Test participants would submit the identifying data prior to the test date, and the remaining data called for by our reporting rules (*e.g.* the detailed test results) within the 45 day period. The Commission believes that structuring an electronic reporting system in this fashion would allow the participants to populate the database with known information well prior to the test, and thus be able to provide the Commission with actual test data, both close to real-time and within a reasonable period in a minimally burdensome fashion. The Commission also seeks comment on this revision of the approved collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–21545 Filed 8–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of Sun American Bank, Boca Raton, Florida, to make any distribution on general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on August 18, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (904) 256–3925. Written correspondence may also be mailed to FDIC as Receiver of Sun American Bank, Attention: Claims Agent, 7777 Baymeadows Way West, Jacksonville, Florida 32256.

SUPPLEMENTARY INFORMATION: On March 5, 2010, Sun American Bank, Boca Raton, Florida, (FIN #10192) was closed by the Florida Office of Financial Regulation, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as its receiver ("Receiver"). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund, *see* 12 U.S.C. 1823(c)(4), the FDIC facilitated a transaction with First-Citizens Bank & Trust Company, Raleigh, North Carolina, to acquire all of the deposits and most of the assets of the failed institution.

Section 11(d)(11)(A) of the FDI Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of June 30, 2011, the value of assets available for distribution by the Receiver, together with maximum possible recoveries on claims against directors, officers, and other professionals was $86,789,915. As of the same date, administrative expenses and depositor liabilities equaled $220,441,349, exceeding available assets and potential recoveries by $133,651,434. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: August 18, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–21546 Filed 8–22–11; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Notice of Intent To Award Affordable Care Act Funding, DP–09–001

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to fund Approved cooperative agreement applications previously received and competed in response to CDC Funding Opportunity, RFA–DP–09–001, "*Health Promotion and Disease Prevention Research Centers (U48).*" It is the intent of CDC to fund the applications with Patient Protection Affordable Care Act (ACA), Section 4002, appropriations.

CFDA Number 93.542 is the ACA-specific CFDA number for this initiative.

Award Information

Approximate Current Fiscal Year Funding: $10,000,000.

Approximate Number of Awards: 15–17.

Approximate Average Award: $625,000.

Fiscal Year Funds: 2011.

Anticipated Award Date: September 30, 2011.

Budget Period: 12 months.

Project Period: 1 year.

Application Selection Process

Only applicants who have applied for and have been selected as Prevention Research Centers under CDC Program Announcement DP–09–001 were eligible to apply for the annual continuation funding.

Funding Authority

CDC will add the following Authority to that which is reflected in the published Funding Opportunity:

—Section 4002 of the Patient Protection and Affordable Care Act (Pub. L. 111–148.).

DATES: The effective date for this action is August 23, 2011 and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT: Elmira Benson, Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail *Elmira.Benson@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (ACA). ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs. ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Services Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

ACA legislation affords an important opportunity to advance public health across the lifespan and to reduce health disparities by supporting an intensive community approach to chronic disease prevention and control.

Therefore, the FOA program activities CDC proposes to fund with ACA appropriations are authorized by the amendment to the Public Health Services Act which authorized the Prevention and Wellness Program.

Dated: August 9, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–21343 Filed 8–22–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–240]

Request for Information: Announcement of Carcinogen and Recommended Exposure Limit (REL) Policy Assessment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) intends to review its approach to classifying carcinogens and establishing recommended exposure limits (RELs) for occupational exposures to hazards associated with cancer. As part of this effort, NIOSH is requesting initial input on these issues (including answers to the 5 questions in the following section), to be submitted to the NIOSH Docket number 240, for a comment period lasting through September 22, 2011. This information will be taken under consideration and used to inform NIOSH efforts to assess and document its carcinogen policy and REL policy regarding occupational hazards associated with cancer. NIOSH has also created a new NIOSH Cancer and REL Policy Web Topic Page [see *http://www.cdc.gov/niosh/topics/cancer/policy.html*] to provide additional details about this effort and progress updates.

Public Comment Period: Comments must be received by September 22, 2011.

ADDRESSES: Written comments, identified by docket number NIOSH–240, may be submitted by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 111, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket*, and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH–240.

Background

NIOSH is announcing a Request for Information on key issues identified and associated with the NIOSH Carcinogen and REL policies. Special emphasis will be placed on consideration of technical and scientific issues with the current NIOSH Cancer and REL Policies that require further examination including the following:

(1) Should there explicitly be a carcinogen policy as opposed to a broader policy on toxicant identification and classification (*e.g.* carcinogens, reproductive hazards, neurotoxic agents)?

(2) What evidence should form the basis for determining that substances are carcinogens? How should these criteria correspond to nomenclature and categorizations (*e.g.,* known, reasonably anticipated, *etc.*)?

(3) Should 1 in 1,000 working lifetime risk (for persons occupationally exposed) be the target level for a recommended exposure limit (REL) for carcinogens or should lower targets be considered?

(4) In establishing NIOSH RELs, how should the phrase "to the extent feasible" (defined in the 1995 NIOSH Recommended Exposure Limit Policy) be interpreted and applied?

(5) In the absence of data, what uncertainties or assumptions are

appropriate for use in the development of RELs? What is the utility of a standard "action level" (*i.e.*, an exposure limit set below the REL typically used to trigger risk management actions) and how should it be set? How should NIOSH address worker exposure to complex mixtures?

SUPPLEMENTARY INFORMATION: NIOSH and stakeholders have expressed concerns recently about limitations in the NIOSH Carcinogen Policy, prompting NIOSH to initiate a review of the carcinogen policy in 2010. A major limitation in the policy is the use of the term "Potential Occupational Carcinogen" which dates to the 1980 OSHA hazard classification for carcinogens outlined in 29 CFR 1990.103 and is defined as *"* * * any substance, or combination or mixture of substances, which causes an increased incidence of benign and/or malignant neoplasms, or a substantial decrease in the latency period between exposure and onset of neoplasms in humans or in one or more experimental mammalian species as the result of any oral, respiratory or dermal exposure, or any other exposure which results in the induction of tumors at a site other than the site of administration. This definition also includes any substance which is metabolized into one or more potential occupational carcinogens by mammals."* A major limitation of this definition is that the policy allows for only one cancer category, which is "potential occupational carcinogen." The adjective "potential" conveys uncertainty that is not warranted with many carcinogens such as asbestos, benzene, and others. This policy does not allow for classification on the basis of the magnitude and sufficiency of the scientific evidence. In contrast, other organizations, such as the International Agency for Research on Cancer (IARC) and the National Toxicology Program (NTP) allow for a more differential classification.

The revision of the NIOSH Carcinogen Policy also coincides with the international realization that there is a need for more efficient and quicker means of classifying chemicals. Qualitative and semi-quantitative approaches such as hazard banding are increasingly being investigated as a means of addressing the vast numbers of unregulated chemicals. NIOSH has been in collaboration with various organizations to consider utilizing hazard banding approaches to control chemicals. This will also be reflected in the review of the carcinogen and RELs policies.

This **Federal Register** notice serves to provide stakeholders and the public an opportunity for input on the revision of the NIOSH Carcinogen and REL Policies. It is anticipated that NIOSH will develop a report on the revised NIOSH Carcinogen and REL Policies to be made available in the Spring of 2012. Additional information regarding NIOSH plans to assess and revise the Carcinogen and REL Policy can be found in the April 2011 NIOSH e-news at *http://www.cdc.gov/niosh/enews/enewsV8N12.html* and on the NIOSH Cancer and REL Policy Web Topic Page [see *http://www.cdc.gov/niosh/topics/cancer/policy.html*].

FOR FURTHER INFORMATION CONTACT: T.J. Lentz, telephone (513) 533–8260, or Faye Rice, telephone (513) 533–8335, NIOSH, MS–C32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: August 12, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–21405 Filed 8–22–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0129]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Comparing Nutrition Knowledge, Attitude, and Behavior Among English-Dominant Hispanics, Spanish-Dominant Hispanics, and Other Consumers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 22, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–New and title "Comparing Nutrition Knowledge, Attitude, and Behavior Among English-Dominant Hispanics, Spanish-Dominant Hispanics, and Other Consumers." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Comparing Nutrition Knowledge, Attitude, and Behavior Among English-Dominant Hispanics, Spanish-Dominant Hispanics, and Other Consumers—(OMB Control Number 0910–NEW)

I. Background

Recent estimates suggest that Hispanics (defined as those who identify themselves as of Hispanic or Latino origin) are the largest and fastest growing minority group in the nation; the proportion of the U.S. population that was Hispanic was 14 percent in 2005 and is projected to increase to 29 percent in 2050 (Ref. 1).

Data from the Centers for Disease Control and Prevention (CDC) indicate that, in 2005 and 2006, 34.3 percent and 32.7 percent of the U.S. adult population are obese and overweight, respectively (Ref. 2). According to CDC, Hispanics had 21 percent higher obesity prevalence than Whites in 2008 (Ref. 3). CDC data also indicate variations in prevalence of obesity among adults of different race-gender groups; for example, during 2006 through 2008, non-Hispanic Blacks had the greatest prevalence of obesity (35.7 percent), followed by Hispanics (28.7 percent), and non-Hispanic Whites (23.7 percent); non-Hispanic Black women had the greatest prevalence (39.2 percent), followed by non-Hispanic Black men (31.6 percent), Hispanic women (29.4 percent), Hispanic men (27.8 percent), non-Hispanic White men (25.4 percent), and non-Hispanic White women (21.8 percent) (Ref. 3).

While some Hispanics living in the United States use the English language exclusively or more often than Spanish (English-dominant Hispanics), other U.S. Hispanics predominantly use the Spanish language in their daily lives

(Spanish-dominant Hispanics) (Ref. 4). Since most U.S. food labels are in English, Spanish-dominant Hispanics' understanding and use of food labels may differ from that of English-dominant Hispanics and of non-Hispanics who use English exclusively. In addition, both English-dominant Hispanics and Spanish-dominant Hispanics may have different awareness, perceptions, and behaviors than English-speaking non-Hispanics on issues of health, nutrition, and food consumption (Refs. 5 through 8).

Existing research suggests that, in addition to language and other demographic differences, acculturation is an important factor associated with individual differences in dietary and public health-related perceptions, attitudes, and behaviors among Hispanics. Acculturation is defined as the change in behavior and values by immigrants when they come in contact with a new group, nation, or culture (Ref. 9). Immigrants may possess different degrees of acculturation, depending on the time of migration and other factors, such as the dominant culture of the neighborhoods where they live and work and type of education received (Refs. 10 and 11). Hence, variation in the degree of acculturation can lead to differences in lifestyle and behaviors, including behaviors related to dietary choices and to use and understanding of nutrition information on food labels, because of English proficiency and degree of assimilation into the values, lifestyles, and diets prevalent in this country. The existing research has shown the influence of acculturation on Hispanics' perceptions, attitudes, and behaviors relating to public health factors including dietary practices, nutrition, the health practices of pregnant women, obesity, coronary heart disease, Type 2 diabetes, alcohol consumption, and smoking behavior (for example, Refs. 10 and 12 through 21).

FDA needs an understanding of how different population groups perceive and behave in terms of food label understanding and use, nutrition, and health to inform possible measures that the Agency may take to help consumers make informed dietary choices. FDA is aware of no consumer research on a nationwide level of the impact of language and acculturation on Hispanics' dietary choices and label use. This study is intended to provide answers to research questions such as whether and how much Spanish-dominant Hispanics, English-dominant Hispanics, and English-speaking non-Hispanics differ in their knowledge, attitude, and behavior toward food label use, nutrition, and health among three population groups and the role that demographic and other factors may play in any differences.

The proposed study will use a Web-based survey to collect information from 2,400 adult members in online consumer panels maintained by a contractor. The study plans to randomly select 800 members into each of three groups: Spanish-dominant Hispanics, English-dominant Hispanics, and English-speaking non-Hispanics. Either an English or a Spanish questionnaire will be used, as appropriate. The study plans to include topics such as: (1) Nutrition and health; (2) use and understanding of food labels and labeling information; (3) degree of capacity to understand and use health information; and (4) levels of acculturation among Hispanic respondents as measured by a Hispanic acculturation scale that is widely used in social science research (Ref. 22). To help understand the data, the study will also collect information on participants' background, including, but not limited to, health status and demographic characteristics, such as age, gender, education, and income.

The study is part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. The results of the study will not be used to develop population estimates. The results of the study will be used for informing possible measures that the Agency may take to help consumers make informed dietary choices.

To help design and refine the questionnaire, we plan to conduct cognitive interviews by screening 72 adult panelists in order to obtain 9 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hour) and each cognitive interview is expected to take 0.5 hour. The total for cognitive interview activities is 11 hours (6 hours + 5 hours). Subsequently, we plan to conduct two waves of pretests of the questionnaire before it is administered in the study. We expect that 360 invitations, each taking 2 minutes (0.033 hour), will need to be sent to adult members of the online consumer panels to have 180 of them complete a 15-minute (0.25 hour) pretest. The total for the pretest activities is 57 hours (12 hours + 45 hours). For the survey, we estimate that 4,800 invitations, each taking 2 minutes (0.033 hour) to complete, will need to be sent to adult members of the online consumer panels to have 2,400 of them complete a 15-minute (0.25 hour) questionnaire. The total for the survey activities is 758 hours (158 hours + 600 hours). Thus, the total estimated burden is 826 hours. This estimate is 496 hours lower than the 1,322 hours published in the 60-day notice and reflects 20 fewer hours for pretest invitation and 476 fewer hours for survey invitation. Recent evidence available to the Agency suggests the study will not need to send as many invitations as originally estimated to achieve its target sample sizes in pretest and survey. FDA's burden estimate is based on prior experience with research that is similar to this proposed study.

In the **Federal Register** of March 14, 2011 (76 FR 13626), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cognitive interview screener	72	1	72	0.083 (5 min.)	6
Cognitive interview	9	1	9	0.5 (30 min.)	5
Pretest invitation	360	1	360	0.033 (2 min.)	12
Pretest	180	1	180	0.25 (15 min.)	45
Survey invitation	4,800	1	4,800	0.033 (2 min.)	158
Survey	2,400	1	2,400	0.25 (15 min.)	600
Total					826

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses but is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Passel, J.S. and C. D'Vera, "U.S. Population Projections: 2005–2050," Pew Research Center, Washington, DC, February 11, 2008, (*http://pewhispanic.org/files/reports/85.pdf*).

2. CDC, "Prevalence of Overweight, Obesity, and Extreme Obesity Among Adults: United States, Trends 1976–80 Through 2005–2006," December 2008, (*http://www.cdc.gov/nchs/data/hestat/overweight/overweight_adult.pdf*).

3. CDC, "Differences in Prevalence of Obesity Among Black, White, and Hispanic Adults—United States, 2006–2008," *Morbidity and Mortality Weekly Report*, 58(27):740–744, July 17, 2009, (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5827a2.htm*).

4. CDC, "Health Disparities Experienced by Hispanics—United States," *Morbidity and Mortality Weekly Report*, 53(40):935–937, October 15, 2004, (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5340a1.htm*).

5. National Heart, Lung and Blood Institute, "Epidemiologic Research in Hispanic Populations: Opportunities, Barriers and Solutions," December 3, 2003, (*http://www.nhlbi.nih.gov/meetings/workshops/hispanic.htm*).

6. Information Resources, Inc., "Times & Trends: Hispanic Consumers—Capturing CPG Market Potential," April 2008, (*http://www.symphonyiri.com/portals/0/articlePdfs/TT_April_2008_Hispanic_Consumers.pdf*).

7. Yang, S., M.G. Leff, D. McTague, *et al.*, "Multistate Surveillance for Food-Handling, Preparation, and Consumption Behaviors Associated With Foodborne Diseases: 1995 and 1996 Behavioral Risk Factor Surveillance Systems Food-Safety Questions," *Morbidity and Mortality Weekly Report*, 47(SS–4):33–54, September 11, 1998, (*http://www.cdc.gov/mmwr/preview/mmwrhtml/00054714.htm*).

8. Lin, C.-T.J. and S.T. Yen, "Knowledge of Dietary Fats Among U.S. Consumers," *Journal of the American Dietetic Association*, 110(4):613–618, April 2010.

9. Marin, G., F. Sabogal, B.V. Marin, *et al.*, "Development of a Short Acculturation Scale for Hispanics," *Hispanic Journal of Behavioral Sciences*, 9(2):183–205, 1987.

10. Satia-About, J., R.E. Patterson, M.L. Neuhouser, *et al.*, "Dietary Acculturation: Applications to Nutrition Research and Dietetics," *Journal of the American Dietetic Association*, 102(8):1105–1118, August 2002.

11. Lin, H., O.I. Bermudez, and K.L. Tucker, "Dietary Patterns of Hispanic Elders Are Associated With Acculturation and Obesity," *Journal of Nutrition*, 133:3651–3657, 2003.

12. Otero-Sabogal, R., F. Sabogal, E.J. Pérez-Stable, *et al.*, "Dietary Practices, Alcohol Consumption, and Smoking Behavior: Ethnic, Sex, and Acculturation Differences," *Journal of National Cancer Institute Monograph*, 18:73–82, 1995.

13. Lara, M., C. Gamboa, M.I. Kahramanian, *et al.*, "Acculturation and Latino Health in the United States: A Review of the Literature and its Sociopolitical Context," *Annual Review of Public Health*, 26:367–397, 2005.

14. Winkleby, M.A., S.P. Fortmann, and B. Rockhill, "Health-Related Risk Factors in a Sample of Hispanics and Whites Matched on Sociodemographic Characteristics: The Stanford Five-City Project," *American Journal of Epidemiology* 137(12):1365–1375, 1993.

15. Byrd, T.L., H. Balcazar, and R.A. Hummer, "Acculturation and Breast-Feeding Intention and Practice in Hispanic Women on the U.S.-Mexico Border," *Ethnicity & Disease*, 11(1):72–79, 2001.

16. Cobas, J.A., H. Balcazar, M.B. Benin, *et al.*, "Acculturation and Low-Birthweight Infants Among Latino Women: A Reanalysis of Hispanic Health and Nutrition Examination Survey Data With Structural Equation Models," *American Journal of Public Health*, 86(3):394–396, 1996.

17. Dixon, L.B., J. Sundquist, and M. Winkleby, "Differences in Energy, Nutrient, and Food Intakes in a U.S. Sample of Mexican-American Women and Men: Findings From the Third National Health and Nutrition Examination Survey, 1988–1994," *American Journal of Epidemiology*, 152(6):548–557, 2000.

18. Khan, L.K., J. Sobal, and R. Martorell, "Acculturation, Socioeconomic Status, and Obesity in Mexican Americans, Cuban Americans, and Puerto Ricans," *International Journal of Obesity*, 21(2):91–96, 1997.

19. Markides, K.S., D.J. Lee, and L.A. Ray, "Acculturation and Hypertension in Mexican Americans," *Ethnicity & Disease*, 3:70–74, 1993.

20. Stern, M.P., C. Gonzalez, B.D. Mitchell, *et al.*, "Genetic and Environmental Determinants of Type II Diabetes in Mexico City and San Antonio," *Diabetes*, 41(4):484–492, 1992.

21. Sundquist, J., and M.A. Winkleby, "Cardiovascular Risk Factors in Mexican American Adults: A Transcultural Analysis of National Health and Nutrition Examination Survey III, 1988–1994," *American Journal of Public Health*, 89(5):723–730, 1999.

22. Thomson, M.D., and L. Hoffman-Goetz, "Defining and Measuring Acculturation: A Systematic Review of Public Health Studies With Hispanic Population in the United States," *Social Science & Medicine*, 69:983–991, 2009.

Dated: August 18, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–21485 Filed 8–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0386]

International Conference on Harmonisation; Guidance on E2F Development Safety Update Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "E2F Development Safety Update Report." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes the format, content, and timing of a development safety update report (DSUR) for an investigational drug. The DSUR will serve as a common standard for periodic reporting on drugs under development (including marketed drugs that are under further study) among the ICH regions. The DSUR can be submitted in the United States in place of an annual report for an investigational new drug application (IND). The harmonized DSUR is intended to promote a consistent approach to annual clinical safety reporting among the ICH regions and enhance efficiency by reducing the number of reports generated for submission to the regulatory authorities.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Ellis F. Unger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4208, Silver Spring, MD 20993–0002, 301–796–2270; or Peter F. Bross, Center for Biologics Evaluation and Research (HFM–755), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5102.

Regarding the ICH: Michelle Limoli, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 3506, Silver Spring, MD 20993, 301–796–8377.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 5, 2008 (73 FR 45462), FDA published a notice announcing the availability of a draft guidance entitled "E2F Development Safety Update Report." The notice gave interested persons an opportunity to submit comments by November 3, 2008.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in August 2010.

The guidance describes the format, content, and timing of a DSUR for an investigational drug. The DSUR will serve as a common standard for periodic reporting on drugs under development (including marketed drugs that are under further study) among the ICH regions. The DSUR is patterned after the periodic safety update report (used for safety reporting in the postmarketing environment) and can be submitted in the United States in place of an annual report for an IND. The harmonized DSUR is intended to promote a consistent approach to annual clinical safety reporting among the ICH regions and enhance efficiency by reducing the number of reports generated for submission to the regulatory authorities.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: August 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21447 Filed 8–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Vaccines and Related Biological Products Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Vaccines and Related Biological Products Advisory Committee. This meeting was announced in the **Federal Register** of July 22, 2011 (76 FR 44016). The amendment is being made to reflect a change in the *Date and Time, Location, Agenda, Procedure,* and *Closed Committee Deliberations* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 2011, FDA announced that a meeting of the Vaccines and Related Biological Products Advisory Committee would be held on September 20, 2011. On page 44016, in the 2nd and 3rd column and on page 44017, in the 1st column, the *Date and Time, Location, Agenda, Procedure,* and *Closed Committee Deliberations* portions of the document are changed to read as follows:

Date and Time: The meeting will be held on September 20, 2011, from 1 p.m. to approximately 4 p.m.

Location: National Institutes of Health (NIH), 9000 Rockville Pike, Building 29B, Conference Room C, Bethesda, MD 20892. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH can, us, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm.* Due to the limited available parking visitors are encouraged to use public transportation.

Agenda: On September 20, 2011, the committee will meet in open session to hear updates of the research programs in the Laboratory of Enteric and Sexually Transmitted Diseases, Division of Bacterial, Parasitic, and Allergenic Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA.

Procedure: On September 20, 2011, from 1 p.m. to approximately 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 13, 2011. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 9, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 10, 2011.

Closed Committee Deliberations: On September 20, 2011, from approximately 3:30 p.m. to approximately 4 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: August 18, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–21535 Filed 8–22–11: 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0332]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of availability that appeared in the **Federal Register** of August 4, 2011 (76 FR 47211). The Agency is required to report annually in the **Federal Register** on the status of postmarketing requirements and commitments required of, or agreed upon by, holders of approved drug and biological products. The August 4, 2011, notice is the Agency's report on the status of the studies and clinical trials that applicants have agreed to, or are required to, conduct. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–19806, appearing on page 47211 in the **Federal Register** of August 4, 2011, the following correction is made:

On page 47214, table 1 is corrected to read as follows:

TABLE 1—SUMMARY OF POSTMARKETING REQUIREMENTS AND COMMITMENTS

[Numbers as of September 30, 2010]

	NDA/ANDA (% of Total PMR or % of total PMC)	BLA (% of Total PMR or % of total PMC) [1]
Number of open PMRs	526	149.
On-schedule open PMRs (see table 2 of this document)	477 (91%)	131 (88%).
Off-schedule open PMRs (see table 3 of this document)	49 (9%)	18 (12%).
Number of open PMCs [2]	473	307.
On-schedule open PMCs (see table 4 of this document)	399 (84%)	236 (77%).
Off-schedule open PMCs (see table 5 of this document)	74 (16%)	71 (23%).

[1] On October 1, 2003, FDA completed a consolidation of certain therapeutic products formerly regulated by CBER into CDER. Consequently, CDER now reviews many BLAs. Fiscal year statistics for postmarketing requirements and commitments for BLAs reviewed by CDER are included in BLA totals in this table.

[2] The number of PMCs reported as open as of September 30, 2009, in the "Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments" notice published in the **Federal Register** on November 9, 2010 (75 FR 68802), inadvertently also included open PMRs. That error has been corrected for the current reporting period.

Dated: August 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21487 Filed 8–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

2011 Technology Transfer Summit North America Conference

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of Conference.

SUMMARY: The NIH Office of Technology Transfer extends invitations to attend the 2011 Technology Transfer Summit North America Conference.

DATES: October 3–4, 2011.

ADDRESSES: NIH campus, 9000 Rockville Pike, Bethesda MD, NIH Clinical Center (Building 10), Masur Auditorium.

SUPPLEMENTARY INFORMATION: The NIH campus in Bethesda, MD will be the site for the 2011 Tech Transfer Summit North America (TTSNA), the leading early-stage biotech partnering, licensing, venture and innovation platform, co-hosted and co-sponsored by the NIH Office of Technology Transfer, TTS Ltd. and regional host partners such as BIO Maryland.

TTSNA is one of a series of summits held within the Global Tech Transfer Initiative and is designed specifically to put innovators, early-stage SMEs and technology managers from leading universities and research institutes together with biotech & pharma licensing & business development executives, VCs, serial entrepreneurs, and leading IP specialists for interactive sessions relating to partnering, licensing & business development.

Conference speakers for the 2011 include:

—Kathy Hudson, Deputy Director, National Institutes of Health (NIH)
—James C. Greenwood, President & CEO, BIO
—Shiv Krishnan, Director, Scouting & Partnering, Sanofi, USA
—Sanjeev Munshi, Director, Licensing and External Research, Merck & Co
—David Kaslow, Head of Vaccines Project & Pipeline Leadership, Merck & Co
—Ed Mascioli, Head of Orphan & Genetic Diseases Research Unit, Pfizer
—Arthur Tzianabos, Vice President of Research, HGT Division, Shire
—Steve Groft, Director, Office of Rare Diseases Research, NIH
—Phil Ross, Managing Director, Healthcare, JPMorgan
—Maarten deJong, Managing Director, Barclays Capital
—Andrew Robertson, Chief Policy Officer, BIO Ventures for Global Health
—Orin Herskowitz, Executive Director & Vice President, Intellectual Property Technology Transfer, Columbia Technology Ventures
—Erik Lium, Assistant Vice Chancellor of Research, UCSF
—Brian Kelly, Director, Technology, Enterprise & Commercialisation, Weill Cornell Medical College
—Daniel Perez, Partner, Bay City Capital
—Hubert Birner, Partner, TVM Capital
—Glen Steinbach, COO, Johns Hopkins Technology Transfer
—Markus Goebel, Managing Director, Novartis Venture Fund

The Summit will strive to induce interactive debate, deliberation and discussion, networking and business over the 2-day period with the leaders in the sector. The Summit conference will be further enhanced by the TTS Initiative Business Social Network, an online business-networking platform powered by JuJaMa. The Network is a communication tool for business that will allow the posting of profiles and technology offers; the searching of other participants by category, by technology or licensing offer; and the setting up of meetings prior to, during and after the Summit. Total participation numbers for this conference will be strictly limited to ensure the ideal environment for real discussion and business.

FOR FURTHER INFORMATION CONTACT: More details about the conference including registration information and the conference agenda can be found by contacting Tech Transfer Summit North America (*http://www.techtransfersummit.com/northamerica2011*). Attendees may also enter the Partner Code "NIH11" to register with a 10% reduction. For information about sign language interpretation or accommodation for disabilities, please contact Sharon Fields at telephone 301–594–7700 or *fieldssh@od.nih.gov.*

Dated: August 16, 2011.

Steven M. Ferguson,

Deputy Director, Licensing & Entrepreneurship, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–21514 Filed 8–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Targeting Resistance in Select Gram-Negative Pathogens.

Date: September 22–23, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Chesapeake Room, Silver Spring, MD 20910.

Contact Person: Nancy Lewis Ernst, PhD, Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21512 Filed 8–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Biodefense (R01)

Dote: September 13, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Ploce: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call)

Contoct Person: Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–1009, *fdesilvo@nioid.nih.gov.*

Nome of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Biodefense (R01)

Date: September 14, 2011.

Time: 12 p.m. to 5 p.m.

Agendo: To review and evaluate grant applications.

Ploce: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call)

Contoct Person: Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–1009, *fdesilvo@nioid.nih.gov.*

Nome of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application.

Date: September 19–20, 2011.

Time: 1 p.m. to 6 p.m.

Agendo: To review and evaluate grant applications.

Ploce: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contoct Person: Maja Maric, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2634, *mojo.moric@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federol Advisory Committee Policy.

[FR Doc. 2011–21511 Filed 8–22–11; 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

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; The Effect of Supervised Practice Driving on Driving Performance Among Newly Licensed Teen Drivers.

Dote: September 15, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Ploce: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contoct Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of, Child Health and Human Development, NIH 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6680, *skondaso@moil.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: August 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21510 Filed 8–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Nome of Committee: NIH Advisory Board for Clinical Research

Date: October 3, 2011

Open: 10 a.m. to 1:15 p.m.

Agendo: To discuss intramural clinical research operational and funding issues.

Ploce: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Closed: 1:15 p.m. to 2 p.m.

Agendo: To discuss personnel matters.

Ploce: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contoct Person: Maureen E Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: August 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21509 Filed 8–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Reproductive Assessment in Rodent Tissues.

Date: September 22, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Nat. Inst. of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21506 Filed 8–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0064]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of an Open Federal Advisory Committee Teleconference.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Thursday, September 8, 2011, via a conference call. The meeting will be open to the public.

DATES: The NSTAC will meet Thursday, September 8, 2011, from 2 p.m. to 3:15 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via a conference call. For access to the conference bridge, contact Ms. Sue Daage at (703) 235–4964 or by e-mail at *sue.daage@dhs.gov* by 5 p.m. September 1, 2011.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Supplementary Information" section below. Associated briefing materials that will be discussed on the conference call will be available at *http://www.ncs.gov/nstac* for review prior to the call. Written comments must be received by the Deputy Manager no later than September 23, 2011, identified by **Federal Register** Docket Number DHS–2011–0064 and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *E-mail: NSTAC@hq.dhs.gov.* Include the docket number in the subject line of the email message.
- *Fax:* (703) 235–4981
- *Mail:* Deputy Manager, National Communications System, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington, VA 20598–0615.

Instructions: All written submissions received must include the words "Department of Homeland Security" and the docket number for this action. Written comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

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

A public comment period will be held during the meeting on September 8, 2011, from 2:45 p.m. to 3:15 p.m., and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Al Woodhouse, NSTAC Alternate Designated Federal Officer, Department of Homeland Security, telephone (703) 235–4900.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness telecommunications policy.

During the conference call, the NSTAC members will receive an update regarding the progress of the NSTAC's Cloud Computing Subcommittee's recent work and receive a tasking from the Executive Office of the President regarding the National Public Safety Broadband Network.

Dated: August 5, 2011.

Allen Woodhouse,

Acting Director, National Communications System.

[FR Doc. 2011–21518 Filed 8–22–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: Docket ID: FEMA–2011–0012]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Level 1 Assessment and Level 3 Evaluations for the Center for Domestic Preparedness (CDP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork

Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 22, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Level 1 Assessment and Level 3 Evaluations for the Center for Domestic Preparedness (CDP).

Type of Information Collection: New information collection.

OMB Number: OMB No. 1660–NEW.

Form Titles and Numbers: FEMA Form 092–0–2, Level 1 Assessment Form; FEMA Form 092–0–2A, Level 3 Evaluation Form for Students; FEMA Form 092–0–2B, Level 3 Evaluation Form for Supervisors.

Abstract: The forms in this collection of information will be used to survey the Center for Domestic Preparedness (CDP) students (and their supervisors) enrolled in CDP courses. The survey will collect information regarding quality of instruction, course material, and impact of training on their professional employment.

Affected Public: State, local or Tribal government.

Estimated Number of Respondents: 72,000.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: .25 burden hours.

Estimated Total Annual Burden Hours: 18,000 burden hours.

Estimated Cost: There are no annual start-up or capital costs.

Dated: August 2, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–21430 Filed 8–22–11; 8:45 am]

BILLING CODE 9111–53–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1997–DR; Docket ID FEMA–2011–0001]

Indiana; 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 State of Indiana (FEMA–1997–DR), dated June 23, 2011, and related determinations.

DATES: *Effective Date:* August 15, 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 Indiana 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 June 23, 2011.

Clay and Lawrence Counties 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. 2011–21427 Filed 8–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1999–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 2 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–1999–DR), dated July 1, 2011, and related determinations.

DATES: *Effective Date:* August 15, 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 July 1, 2011.

Fisher County for Public Assistance.

Kent and Moore Counties for Public Assistance (already designated for emergency protective measures [Category B], 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. 2011–21429 Filed 8–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–85]

Notice of Proposed Information Collection for Public Comment; Emergency Comment Request; FY 2011 Notice of Funding Availability (NOFA) for Neighborhood Stabilization Program Technical Assistance and Capacity Building; Request for Qualifications (NSPTA)

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 6, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 14 days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIR Submission @omb.eop.gov;* fax: 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from the Reports Management Officer.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: FY 2011 Notice of Funding Availability (NOFA) for Neighborhood Stabilization Program Technical Assistance and Capacity Building; Request for Qualifications (NSPTA).

Description of the Need for the Information and Its Proposed Use: The Narratives, Matrices and Reporting Requirements associated with NSP TA will allow CPD to accurately assess the experience, expertise, and overall capacity of applicants for technical assistance under the FY 2011 Program NOFA. They will also allow CPD to monitor and evaluate TA progress over the course of each grant and make necessary interventions. The new format for this type of collection also makes it easier for applicants to apply and report by reducing the time required for filling out an application and reporting forms, while retaining the utility of the previous collection methods.

OMB Control Number: 2506–Pending.

Agency Form Numbers: NSP Technical Assistance and Capacity Building Experience Form; NSP Technical Assistance and Capacity Building Expertise Form.

Members of Affected Public: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	165	1.36		22.466		5,055

Status: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 16, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–21434 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–30]

Notice of Proposed Information Collection: Comment Request; Procedures for Appealing Section 8 Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 24, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; or telephone (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Program Contact, Catherine Brennan, Director, Office of Housing, Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the Section 8 rent appeal process. (2)

Evaluate whether to continue the quality of appeal that rendered the initial rent adjustment decision made to local HUD Office or Contract Administrator and Section appeals to HUD Director, who will designate to an Officer to review any appeal. This Notice also lists the following information:

Title of Proposal: Procedure for Appealing Section 8 Rent Adjustments.

OMB Control Number, if applicable: 2502–0446.

Description of the need for the information and proposed use: HUD is charged with the responsibility of determining the method of rent adjustments and with facilitating these adjustments. Because rent adjustments are considered benefits to project owners, HUD must also provide some means for owners to appeal the decisions made by the Department or the Contract Administrator. This appeal process, and the information collection included as part of the process, play an important role in preventing costly litigation and in ensuring the accuracy of the overall rent adjustment process.

Agency form numbers, if applicable: Owners will submit rent appeal on owner's letterhead providing a written explanation for the appeal.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1050. The number of respondents is 525 and the number of responses is 525, the frequency of response is on occasion, and the burden hour per response is 2.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 17, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–21441 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–83]

Notice of Submission of Proposed Information Collection to OMB; Housing Choice Voucher Program Administrative Fee Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Housing Choice Voucher Program Administrative Fee Study is designed to evaluate the amount of funding needed to administer the voucher program based on direct measurement of the work actually performed by voucher administrators. The study will measure and identify the tasks performed by PHA staff to meet program requirements, to assist voucher holders in finding and renting suitable housing in a timely way, and to ensure that a broad range of affordable rental housing throughout the community is available to voucher families. The study will identify the costs involved in each task, including salaries, benefits, and overhead. Ultimately, the findings of the study will be used to inform the development of a new formula for allocating HCV program administrative fees.

DATES: *Comments Due Date:* September 22, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Housing Choice Voucher Program Administrative Fee Study.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The Housing Choice Voucher Program Administrative Fee Study is designed to evaluate the amount of funding needed to administer the voucher program based on direct measurement of the work actually performed by voucher administrators. The study will measure and identify the tasks performed by PHA staff to meet program requirements, to assist voucher holders in finding and renting suitable housing in a timely way, and to ensure that a broad range of affordable rental housing throughout the community is available to voucher families. The study will identify the costs involved in each task, including salaries, benefits, and overhead. Ultimately, the findings of the study will be used to inform the development of a new formula for allocating HCV program administrative fees.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	300	1		0.4		950

Total Estimated Burden Hours: 950.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–21440 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–29]

Notice of Proposed Information Collection: Comment Request; Multifamily Financial Management Template

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 24, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; or telephone (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Housing Program Manager, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2626 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Multifamily Financial Management Template.

OMB Control Number, if applicable: 2502–0551.

Description of the need for the information and proposed use: The Uniform Financial Reporting Standards (UFRS) regulation requires HUD's multifamily housing program participants to submit financial data electronically, using generally accepted accounting principles, in a prescribed format. HUD collects the financial information from participants to evaluate the financial condition of multifamily properties receiving Federal financial assistance. With the standardization of the data under UFRS, it has been easier for HUD to monitor compliance, and to identify and mitigate risks to the government.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 297,108. The number of respondents is 21,222, the number of responses is 21,222, the frequency of response is annually, and the burden hour per response is 14.

Status of the proposed information collection: This is a renewal of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 17, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–21438 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–84]

Notice of Submission of Proposed Information Collection to OMB Continuum of Care Check-Up Assessment Tool

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The CoC Check-up Tool enhances each CoC's awareness of their capacity to assume new responsibilities outlined in the McKinney-Vento ACT, as amended by HEARTH Act. Communities will self-identify and prioritize areas where improvement is needed. HUD will use aggregate information of assess and target technical assistance needs, prepare for training conferences, develop sample tools and templates, guidebooks, Webinars to help communities plan the transition.

DATES: *Comments Due Date:* September 22, 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 (2506–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-

mail Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Continuum of Care Check-up Assessment Tool.

OMB Approval Number: 2506—Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The CoC Check-up Tool enhances each CoC's awareness of their capacity to assume new responsibilities outlined in the McKinney-Vento ACT, as amended by HEARTH Act. Communities will self-identify and prioritize areas where improvement is needed. HUD will use aggregate information of assess and target technical assistance needs, prepare for training conferences, develop sample tools and templates, guidebooks, Webinars to help communities plan the transition.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	450	8		1.5		5,400

Total Estimated Burden Hours: 5,400.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–21437 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–28]

Notice of Proposed Information Collection: Comment Request; Application for Energy Innovation Fund—Multifamily Pilot Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 24, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Associate Deputy Assistant Secretary for Affordable Housing Preservation, Multifamily Housing Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–8386 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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 Energy Innovation Fund—Multifamily Pilot Program.

OMB Control Number, if applicable: 2502–0599.

Description of the need for the information and proposed use: Application information will be used to evaluate, score and rank applications for grant funds.

Agency form numbers, if applicable: HUD 2880, HUD 424CB, HUD 2993, HUD 2991, SF424, SF424 Supp, SF LLL.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 2470.5. The number of respondents is 383, the number of responses is 502, the frequency of response is on occasion, and the burden hour per response is 93.25.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 17, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–21435 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–32]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Malden Housing Authority of Malden, MA for the purchase and installation of side opening Uniform Federal Accessibility Standards-compliant (UFAS-compliant) ovens for the Linden Homes project, and to the Philadelphia Housing Authority for the purchase and installation of ductless split air conditioning systems for its scattered sites projects and convection microwave ovens for its scattered sites projects and its Plymouth Halls project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4112, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that the following exceptions were granted:

1. Malden Housing Authority. On July 21, 2011, upon request of the Malden Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Linden Homes project. The exception was granted by HUD on the basis that the relevant manufactured goods (UFAS-compliant side opening ovens) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

2. Philadelphia Housing Authority. On July 6, 2011, upon request of the Philadelphia Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with its scattered sites project. The exception was granted by HUD on the basis that the relevant manufactured goods (ductless split air conditioning systems) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

3. Philadelphia Housing Authority. On July 21, 2011, upon request of the Philadelphia Housing Authority, HUD granted an additional exception to applicability of the Buy American requirements with respect to work, using CFRFC funds, in connection with its scattered sites project. The exception was granted by HUD on the basis that the relevant manufactured goods (convection microwave ovens) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

4. Philadelphia Housing Authority. On August 1, 2011, upon request of the Philadelphia Housing Authority, HUD granted an additional exception to applicability of the Buy American requirements with respect to work, using CFRFC funds, in connection with the Plymouth Halls project. The exception was granted by HUD on the basis that the relevant manufactured goods (convection microwave ovens) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: August 11, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–21436 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5514–N–02]

Request for Qualification (RFQ) for the Fellowship Placement Pilot Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

Funding Opportunity Title: Fellowship Placement Program.

Eligible Applicants: A single third party, or a partnership of third parties as defined under section I.B. *Definitions* of this notice.

Announcement Type: Initial Announcement.

OMB Control Number: The OMB control number is 2528–0272.

Catalog of Federal Domestic Assistance Number (CFDA): The CFDA number for this announcement is 14.529.

SUMMARY: This notice announces HUD's proposal to conduct a Fellowship Placement Pilot (fellowship program). The fellowship program is designed to assist local governments rebuild their capacity by training and placing highly motivated early to midcareer professionals into two-year fellowships to work in a mayor's office or other offices of local government agencies.

HUD will conduct the fellowship program in six pilot cities. HUD has conducted an extensive evaluation process and have selected the following six pilot cities: Chester, PA; Cleveland, OH; Detroit, MI; Fresno, CA; Memphis, TN; and New Orleans, LA.

Through a national competitive process, up to 30 fellows will be recruited for the initial class, where each pilot city may receive up to five fellows. Fellows will receive stipends and will be mentored by staff located in each pilot city.

To administer the fellowship program, HUD will select an eligible third party as defined in section II.B. *Definitions* of this notice. Interested third parties are invited to submit full applications to be reviewed by HUD for consideration.

While there is no match requirement for the fellowship program, HUD recognizes that the scope of work required of the program may exceed the funds that are available for this grant. Therefore, HUD expects that the selected third party will secure additional funding support from other philanthropic organizations to fulfill the scope of work for the fellowship program. (Please see section II.C.1 *Leveraging* for more information.)

Funding for the fellowship program was made available to HUD through the Rockefeller Foundation, which HUD is statutorily authorized to accept.

DATES: *Request for Qualification Due Date:* Applications are due no later than September 22, 2011, 11:59 p.m., Eastern Standard Time. If applying as a partnership, only the lead organization needs to submit an application for the partnership. HUD will review the Request for Qualification (RFQ) received from third parties and anticipates that it will select a grantee no later than 30 days after September 22, 2011, when the original applications were submitted.

ADDRESSES: Applicants seeking to apply as the third party to manage the fellowship program are directed to submit their application, responses and relevant documents (see Appendix B for checklist) to *FellowshipPlacementProgram@hud.gov* by September 22, 2011.

Applicants may download the required application documents and forms SF424, SF424sup and SF–LL at: *http://www.huduser.org/portal/fellowship/placepilot.html.*

FOR FURTHER INFORMATION CONTACT: Kheng Mei Tan, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–402–4986 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, senior leadership from the White House, HUD, and other federal agencies have assessed ways to enhance technical assistance to help some of the nation's most economically distressed cities so that they may begin to stabilize and rebuild their local economies. The result of these discussion led to the creation of the White House's *Strong Cities, Strong Communities* (SC2) initiative, a new and customized pilot initiative to strengthen local capacity and spark economic growth in local communities.

These cities, formerly key economic engines of regional and national prosperity have in the past several decades, undergone high poverty and unemployment rates, severe residential and commercial vacancies, long-term population loss, and have struggled to return to a place of economic productivity. The long term economic decline of these cities have constrained local resources, and precluded them from attracting, hiring and maintaining sufficient staff to support key operations and execute revitalization strategies. Moreover, rising government costs, declining revenue streams, and the requirement that state and local governments maintain a balanced budget continue to further these economic challenges.

However, despite these significant challenges, these cities possess tremendous physical, commercial, and public assets that can be used to revive their local and regional economies. In an effort to ensure the economic health and well being of regional and national economies, these cities must be given the best opportunity possible to regain strength through leveraging their key assets and extensively partner with public and private sectors. In addition, the revitalization of these cities can be assisted by providing them with additional highly skilled staff with wide-ranging technical expertise in fields that include urban planning, workforce training, economic development, and human capital strategies.

The fellowship program is one of four strategies of the White House SC2 initiative that is part of a broader and new approach to making the Federal investment model more flexible, targeted, tailored, and holistic in building local capacity in cities and regions facing long-term challenges. With this new method, these cities can more effectively build partnerships with businesses, non-profits, and other key economic players that will help attract critical private investment to create jobs, promote economic growth, and enhance community prosperity. As a result, this targeted assistance will help put these places on a path towards creating a customized and specific plan for long-term economic revitalization.

II. Fellowship Placement Pilot Program

A. Fellowship Placement Pilot Program Overview

As described in the *Summary,* the fellowship program will be a competitive program that provides funding for early to mid-career professionals to work for two year terms in local government positions to supplement existing local capacity. HUD envisions that through a national competitive process, up to 30 fellows who are strongly committed to public service, will be selected for the initial fellowship class. Fellows will be deployed to one of the six pilot cities that have been selected for the SC2 initiative. In their pilot cities, they will support and assist local governments in their economic revitalization efforts. Fellows will receive stipends and will be mentored by staff located in each pilot city. The objectives of fellows assigned to selected pilot cities will be to:

1. Take on high-level responsibilities and be immersed in the core operations of the host city;
2. Engage in peer-to-peer learning opportunities and become active leaders in their host city; and
3. Be intensely engaged and committed to the redevelopment of the city so that they remain working in the city after the end of the program.

HUD will conduct the fellowship program in the following pilot cities: Chester, PA; Cleveland, OH; Detroit, MI; Fresno, CA; Memphis, TN; and New Orleans, LA. Each pilot city may receive up to five fellows.

HUD has conducted a comprehensive city assessment for each pilot city to identify their key challenges and areas of capacity need. The city assessment provides useful information to help HUD and the fellowship program determine how fellows can be used to support each pilot city.

Funding for the fellowship program is provided through a donation of $2.5 million by the Rockefeller Foundation, a private philanthropic organization, which HUD is authorized to accept under section 7(k)(1) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k)(1)). The donation was specifically provided to HUD to develop, manage, and implement a national fellowship program to enhance the capacity of some of the nation's

most economically distressed cities. In addition, section 3(b) of the Department of Housing and Urban Development Act (42 U.S.C. 3532(b)) authorizes the Secretary of HUD to "exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development" as well as to "provide technical assistance and information * * * to aid state, county, town, village, or other local governments in developing solutions to community and metropolitan development problems."

B. Fellowship Placement Pilot Program Administrator

HUD is seeking applications through this notice from eligible third parties (Administrator) to administer the fellowship program. The selected Administrator will be responsible for two major activities of the fellowship program:

1. Manage and administer the fellowship program at the national and local level (Activity 1); and

2. Develop training curriculum and train fellows for the program (Activity 2).

To be eligible for selection, the Administrator must be able to carry out both activities.

The selected Administrator will be a single third party or a partnership of third parties, as the term "third party" is defined below, along with other key definitions.

Definitions: The following terms shall have the meaning indicated below:

Administrator: The term "administrator" means a third party or partnership of third parties that will be responsible for all tasks associated with activities 1 and 2 described in this Expression of Interest.

Third-party: The term "third party" means an educational institution, private and for-profit entity, or private or public nonprofit with a 501(c)(3) status.

Partnership: The term "partnership" means any combination or grouping of two or more third-parties as previously defined. Examples of possible partnerships among third parties may include, but is not limited to, a partnership between:

- A national or regional leadership institute and local universities or other local organization with relevant experience; or
- A volunteer or community driven organization and college institution.

Further, to differentiate among the tasks associated with Activity 1 and Activity 2, HUD will use the following terms:

Activity 1

Local organization: The term "local organization" will refer to those third parties that will be tasked to work in each of the pilot cities. In addition, HUD will expand this definition of "local organization" to include an individual(s) who is a qualified independent consultant or professional expert that can effectively manage the work at the local level.

Activity 2

Training Organization: The term "training organization" will refer to the third parties that will assume all tasks associated with training as described in section II.C.2 of this Expression of Interest.

Period of expenditure of fellowship program funds: The $2.5 million to be made available for the fellowship program is to be used by the Administrator over the course of 32 months from the date that funding is made available. HUD Headquarters will monitor the Administrator to ensure that the funds are efficiently utilized over the 32 month period.

Cooperative agreement: Upon selection of an Administrator, HUD intends to execute a cooperative agreement with the Administrator that delineates the objectives, roles and responsibilities for HUD and the Administrator. HUD recognizes that the success of the fellowship program will require flexibility and adaptability in design and implementation. Therefore, the cooperative agreement will allow HUD to work closely with the Administrator to help fine tune activities as needed to ensure that activities are implemented in a manner that is consistent with the objectives of the fellowship program. HUD anticipates that it will have significant involvement in all aspects of the fellowship program's planning, delivery, and follow-up.

C. Primary Tasks of the Administrator

HUD's proposal for the fellowship program involves two major activities for the Administrator to carry out, as noted above. The following provides more details on these activities.

1. Activity 1: Manage and Implement the Fellowship Program at the National and Local Level

Coordination with selected pilot cities: HUD recognizes that the fellowship program will require a local presence in each of the pilot cities. Therefore, the Administrator will be required to identify, coordinate and collaborate with a local organization in each of the pilot cities. (**Note:** In the application, HUD is asking for an outline of a detailed plan that describes how the applicant will identify, select and coordinate with local organizations.)

HUD expects the relationship between the Administrator and local organizations to be sufficiently flexible to ensure that the program functions smoothly and successfully. The Administrator will be responsible for the following six tasks:

- Managing the overall operations of the fellowship program which includes paying fellow stipends, recruiting and selecting fellows, and coordinating with local organizations in each pilot city.
- Working with the city to ensure that fellows are well integrated with their pilot city and working on high-level, strategic projects;
- Helping to coordinate site visits with the training organization;
- Identifying additional training and mentoring opportunities fellows may require as they progress through the program; and
- Tracking and monitoring data to be used for evaluating the success of fellows and the fellowship program.
- Securing additional support from philanthropic organizations to meet the objectives and scope of work in the fellowship program.

Note: Applicants must specify in their application who (the Administrator or local organization) would be responsible for carrying out the five tasks described above.

Payment of fellows: The Administrator will be responsible for paying fellows in the program. HUD plans to set-aside a portion of the $2.5 million to pay fellow stipends. HUD anticipates that fellow stipends will be $60,000 per year. In the best case scenario, the cost of the stipend is shared between the pilot city and the program. HUD is in the process of negotiating with each pilot city to determine the cost share of the stipend.

Recruitment and selection of fellows: The Administrator will be responsible for recruiting and selecting qualified fellows for the program. No HUD or federal employees are eligible to participate in the fellowship program. The Administrator will be primarily responsible for marketing and advertising the program in places such as graduate programs, career listservs and public sector networks. HUD may also assist in advertising the program to increase the number of applicants.

HUD recognizes that selecting the most qualified fellows is a critical element to ensuring the success of the fellowship program. As a result, the Administrator to be selected must have

significant expertise in similar selection and recruitment experience, preferably for public service employment. HUD will work with Administrator to ensure that the types of fellows selected meet the needs and objectives of the fellowship program. HUD also has developed general criteria for the types of qualifications anticipated for participation in the program. Please see Appendix A for the list of fellow qualifications.

HUD expects the Administrator to work closely with pilot cities to ensure that the skill sets of fellows recruited reflects the needs of the pilot cities. Before the recruitment process begins, HUD will connect the Administrator to the relevant pilot city officials to facilitate such coordination.

Coordination with local organizations: The Administrator will coordinate their activities with local organizations to ensure that the objectives of the fellowship program are being met. This may include activities such as monitoring the work of the fellows and working with the pilot cities to identify potential projects. HUD does not want to be rigid in defining these roles and responsibilities. Rather, HUD expects the relationship between the Administrator and the local organizations to be flexible enough to ensure that the program operates smoothly and successfully.

Mentorship of fellows: HUD recognizes that mentors will be critical to the success and retention of fellows in the program. HUD does not want to be rigid in defining the roles and responsibility of mentorship. Rather, HUD expects the selected Administrator to be adaptive, responsive and flexible enough to meet the needs of fellows. This would include ensuring that fellows work on challenging and strategic projects and are well-integrated and connected to their pilot city.

Due to the complex nature of the work required of fellows to meet the intricate challenges of pilot cities, HUD anticipates that the roles and responsibilities of fellows will likely change as the program progresses. In addition, HUD does not have specific projects for fellows in mind. However, HUD, at minimum, expects that the work of fellows must be high-level, strategic projects that will help advance the economic goals of a pilot city. As described in section II.A *Fellowship Placement Pilot Program Overview,* the types of projects that fellows are expected to work on will be informed by the city assessments that HUD has completed for each pilot city. Please also review section D. *Pilot Cities, City Assessments* for more information on the city assessment process.

Coordinating training activities: HUD expects the selected Administrator will work to identify opportunities for additional training which may include, but are not limited to conferences, workshops, or meetings. In addition, the Administrator will help coordinate site visits throughout the span of the fellowship program.

Evaluation: HUD expects that the selected Administrator will collect data to help HUD evaluate the success of fellows and the program. HUD will provide the Administrator with a basic template to collect qualitative and quantitative information. In addition, HUD welcomes proposals from the Administrator on additional metrics for data collection.

Leveraging: As described in the *Summary,* HUD will not have a match requirement for the fellowship program. However, HUD recognizes that the scope of work required of the program may exceed the funds that are available for this grant. Therefore, HUD expects that the selected Administrator will secure additional funding support from other philanthropic organizations to fulfill the scope of work for the fellowship program. (**Note:** Applicants will be required to explain how they plan to identify and secure additional financial support to meet the full scale of the fellowship program in their applications.)

2. Activity 2: Develop Training Curriculum and Train Fellows for the Fellowship Program

HUD expects that fellows selected will likely enter the program with an array of skills and expertise, but notwithstanding skills and expertise, fellows will be expected to undergo orientation and training. The selected Administrator will either serve as the training organization or identify a training organization to assist with training selected fellows. In this discussion of Activity 2, training organization refers to the entity (either the Administrator or another third party) that will be responsible and conduct orientation and training. For this activity, the training organization would be required to complete the following tasks:

a. Develop orientation materials for fellows entering the program;

b. Develop or apply existing training curriculum that will equip fellows with the fundamental knowledge, tools and skills they would need to be successful in the program.

c. Identify the locations of where fellows are to be trained and train fellows; and

d. Coordinate with the national and local intermediaries on additional training fellows may need as they progress through the program, as well as help to coordinate site visits.

Orientation: The training organization will develop the materials and agenda to help orient the new class of fellows. The training organization will administer the orientation training and coordinate activities, guest speakers and attendees with HUD.

Training: The training organization will be responsible for all aspects of training, which includes training fellows and developing the training curriculum for fellows. HUD expects that training courses should be practical in nature, and focus on leadership development and team building. Areas of focus will be wide-ranging in scope and may include, but are not limited to project management; bureaucratic navigation; finance and acquisition; data and monitoring; changing market conditions; urban planning and redevelopment; human and social capital development; and local government finance and budgeting.

While HUD recognizes that the training of fellows will largely be "on-the-job" training, HUD expects that the training courses developed should make every effort to draw on real world experiences in the policies and practices of local government.

Development of local training opportunities: The training organization will be responsible for developing or identifying additional local training opportunities for fellows. Responsibilities for the training organization may include, but are not limited to, coordinating site visits; developing workshops on a specific topic; and identifying and bringing in expert consultants or speakers to educate fellows. While HUD will not require a minimum number of training opportunities or site visits, HUD expects at least one site visit to be in a pilot city. The purpose of site visits is to help increase the knowledge and expertise of fellows in the program.

Leveraging: HUD recognizes that the scope of work required of the fellowship program will exceed the funds that are available for this grant. Therefore, HUD expects that the training organization will secure additional funding support from other philanthropic organizations to fulfill the scope of work for the fellowship program. (**Note:** Again, applicants will be required to explain how they plan to identify and secure

additional financial support to meet the full scale of the fellowship program in their applications.)

3. Reporting Requirements

HUD will require the selected Administrator to report to the Government Technical Representative (GTR) who will be responsible for managing the fellowship program grant at HUD no less often than quarterly, unless otherwise specified in the cooperative agreement. As part of this required report to HUD, the selected Administrator will update the GTR with information on actual outputs and data related to outcomes achieved, and a narrative explanation of any disparity between projected and actual results. HUD will also require the selected Administrator to provide HUD with a final narrative report no more than four months from the end of the grant period.

Indirect costs: Indirect costs, if applicable, are allowable based on an established approved indirect cost rate. Applicants should have on file, and submit to HUD as part of their grant application, a copy of their approved indirect cost rate agreement if they have one. Applicants that are selected for funding but do not have an approved indirect cost rate agreement established by the cognizant federal agency, and who want to charge indirect costs to the grant, will be required to establish a rate. In such cases, HUD will issue an award with a provisional rate and assist applicants with the process of establishing a final rate.

D. Selected Pilot Cities

HUD has announced the pilot cities for the fellowship program. They are Chester, PA; Cleveland, OH; Detroit, MI; Fresno, CA; Memphis, TN; and New Orleans, LA.

City assessments: HUD has conducted a comprehensive city assessment. The purpose of the city assessment is to identify the key challenges and areas of need for each pilot city. In conducting these assessments, HUD has worked closely with city mayors and their staff to examine areas such as staffing resources; internal decision making processes; fiscal and budget capacity; and economic development and housing projects.

The Administrator, in close collaboration with each pilot city, may use the city assessments to identify the types of work and projects for fellows to undertake in the program. (HUD will help connect the Administrator with each pilot city.) By understanding the types of work that may be identified by the pilot city, the Administrator may be better able to recruit and match fellows according to the needs of each pilot city.

HUD's Coordination Role. When an Administrator is selected, HUD will take the lead role in coordinating all key aspects of the program between the Administrator and the pilot cities to ensure the successful implementation of program objectives. HUD's role in coordination would include, but is not limited to:

- Facilitating meetings between the Administrator and the pilot cities;
- Negotiating, where appropriate, fellowship work responsibilities;
- Hosting site visits in pilot city locations.

III. Rating Factor Overview, General Rules and Instructions

HUD will rate the qualifications of an applicant on three rating factors described below. Only applicants (a single third party or a partnership of third parties) that can meet the competencies of both activities 1 and 2 should submit applications. If applying as a partnership, a lead applicant must be named in the application form SF424. The lead applicant also will be responsible for managing the scope of work in the activities applied for by the partnership. Only the lead applicant needs to submit an application, and all relevant forms and documents on behalf of the partnership.

The total number of points possibly awarded for an application is 190 points.

The applicant must answer all questions in this RFQ. HUD suggests that applicants answer and label their responses in the order of which the rating factor questions are asked. Applicants that leave questions unanswered will be determined to have submitted incomplete applications, and their applications will not be considered.

A. Page Limitations and Font Size

Applicant responses to all of the rating factors must be formatted so that the total number of pages submitted are equal to no more than 18 single-sided pages of singlespaced text based on an 8.5 by 11 inch paper, using a standard 12 point font. However, for third parties submitting their application as a partnership, they are allowed an additional four pages (for a total of 22 pages).

Reviewers will not review more than 18 pages for all the factors combined (unless the applicant is submitting as a partnership, in which case the page limit is 22).

The rating factors will ask the applicant to submit an organization chart and contact information, resumes, references, budget table and project completion schedule. This information should be added to the back of the responses to the rating factors as an appendix, and will not count towards the page limit. Please label the appendix using the following format and order:

- Appendix A: Organization Chart & Contact list
- Appendix B: Resumes
- Appendix C: References
- Appendix D: Budget Table
- Appendix E: Project Completion Schedule

B. Submitting Required Documents

All applicants applying to this RFQ must submit additional documents in addition to their responses to the rating factors below. These documents are: Application form SF–424, SF424sup, and SF–LL.

SF–424: Applicants applying as a single third party must complete this form. If an applicant is applying as a partnership, only the lead organization in the partnership is required to submit a SF–424 on behalf of the partnership.

Note that as part of the SF–424 form, and SF424sup form, the applicant will be required to provide their DUNS number. This DUNS number allows the federal government to track federal funding allocations. Please see Appendix C on instructions on how to secure a DUNS number if the applicant does not have one.

SF424sup: This document must be submitted by all third parties, regardless of whether they are applying as a single third party or a partnership.

SF–LL: This document is a lobbying disclosure form. This form is only required to be submitted by all third parties that conduct lobbying activities, regardless of whether they are applying as a single third party or a partnership.

For a helpful checklist, please see Appendix B.

C. Rating Factors

Rating Factor 1: Demonstrated Capacity of the Applicant and Relevant Organizational Staff (70 Points)

A. Previous Experience (40 Points)

1. General question (10 points): HUD is interested in the applicant's demonstrated history of direct public service and if relevant, its placement of public servants within the last 24 months. This must include a brief explanation about the objectives, goals and work of the applicant, and any awards that the applicant has received for public service. In addition, please describe any previous work, partnerships or collaborations with the

federal or local government. If applying as a partnership, please provide a brief explanation for all third parties in the partnership that answers the latter questions.

2. The following questions relate only to Activity 1 (15 points). The applicant must explain its recent experience (within the last 24 months) where the applicant has managed activities similar to the ones covered under Activity 1. In answering the questions below (2a–c), the applicant's explanation should include a discussion of (1) the tasks undertaken, (2) actual results achieved, and (3) the specific resources applied to each task.

a. The applicant must explain its demonstrated experience in working on projects that have required it to connect with other local networks, organizations and/or key individuals in cities. In addition, the applicant must explain how it has built and maintained these relationships with local networks, organizations and/or key individuals, and how integral this collaboration was to its project.

b. The applicant must explain its demonstrated experience in attracting and recruiting talented individuals from around the country, including those from top universities or other career networks. The applicant, if relevant, should also provide an explanation of how they have mentored recruits.

c. If relevant, the applicant must explain its demonstrated experience in managing staff and/or program participants who work remotely.

3. The following questions relate only to Activity 2 (15 points). The applicant must explain its recent experience (within the last 24 months) where the applicant has managed activities similar to the ones covered under Activity 2. In answering the questions below (3a–b), the applicant's explanation should include a discussion of (1) the tasks undertaken, (2) actual results achieved, and (3) the specific resources applied to each task.

a. The applicant must explain its demonstrated experience in developing training curriculum for a public service and/or community or economic development program and how it has trained past participants. In addition, please include the length of training; the purpose of the training; the types of training past participants underwent (e.g., classroom instruction, site visits, workshops); and how it has recruited instructors and speakers to enhance the trainings.

b. The applicant must explain its demonstrated experience in partnering with other organizations, individuals are institutions to develop training curriculum for a fellowship program.

B. Management Structure (30 Points)

Organization Structure (26 points): HUD is interested in understanding the applicant's capacity to support the fellowship program in relation to ALL activities described in the RFQ.

1. The applicant must provide a general description of its management structure that explains how the organization will work together to ensure that the activities will be achieved successfully and how decisions will be made.

Please include an organization chart that identifies all key management positions and the names and positions of staff managing ALL key tasks described in the RFQ that are associated with both activities described in the RFQ. The applicant must also describe the key staff and their specific roles and responsibilities for the management of its proposed activities. Please also include resumes and a brief description of the prior experience for each key staff member.

If applying as a partnership, the applicant must answer the latter questions in the context of the partnership.

In addition to your organization chart, please include on a separate page a contact list of all third parties associated with this application. This must include the name of ONE key point of contact for the third party and include the address, city, state, zip code and phone number. If you are applying as a partnership, indicate which third party is the lead organization, and include ONE key point of contact and the respective address, city, state, zip code and phone number for each third party in the partnership, including the lead organization.

References (4 points). The applicant must include two references for recent work similar to the programs covered under the RFQ that has been undertaken by the applicant. If a partnership, the applicant must include two references for each third party in the partnership.

References must be from an organization, individual or institution that the applicant has worked with in the past 24 months applicable to the activity(s) that are described in this RFQ. References must be submitted in the form of a letter (one-page maximum) that includes a contact name, address, phone number and email address so that HUD may verify the information. The letter must speak to the relevant work experience of the applicant.

Rating Factor 2: Soundness of Approach (100 Points)

A. Proposed Activities (90 Points)

1. (5 points) The applicant must provide a general description of the activities it proposes to undertake for this fellowship program, including any additional activities it plans to undertake that will not be funded by the fellowship program but that the applicant might pursue because it may benefit the program.

In addition to the latter explanation, for Activity 1 (50 points), please address specifically in the proposal the following:

a. HUD recognizes that key to the success of the fellowship program will be determined by the close collaboration and communication between the national and local third parties. HUD recently has announced the pilot cities and would like the applicant to describe in detail:

i. How it plans to identify and select the most appropriate types of local organizations or individuals that it will work with to meet the objectives of Activity 1.

ii. How it anticipates each local organization or individual will communicate and work with the applicant to ensure the success of the fellowship program.

iii. What it thinks the key responsibilities and roles would be of the local organizations to accomplish the tasks associated with Activity 1.

b. HUD is interested in understanding how the applicant plans to market the program to secure the most qualified fellows. The applicant must include a discussion of how it plans to reach out to various places to recruit qualified fellows.

c. HUD is interested in learning the applicant's process for selecting fellows. While HUD recognizes that some of the fellow selection will be based on the needs of the pilot cities, HUD is looking for an explanation of the applicant's proposed selection process and any proposed criteria for fellows it may have in addition to the fellows criteria in Appendix B. Information in this process may include additional consultants and experts the applicant may hire, how it plans to conduct the interviews, and what additional criteria—given its understanding of fellowship programs—it may look for in fellows.

d. HUD would like to know how the applicant plans to identify any additional training opportunities (including site visits, workshops, and conferences) for fellows in the program.

e. HUD recognizes that mentoring fellows will be critical to the success of

the program. Therefore, HUD expects the applicant to have a close mentor relationship with each fellow. The applicant must explain how it plans to mentor fellows and how it plans to help them resolve or work through their challenges as they arise in the program.

f. The applicant should provide HUD with a list and description of possible metrics it thinks would be valuable to collect for evaluation.

For Activity 2 (30 points), the applicant must address specifically in the proposal the following:

The applicant must provide a brief explanation of how it plans to develop training curriculum, how it plans to train fellows, and the frequency of which fellows will be trained. The applicant must include a discussion on how its proposed training curriculum would advance and enhance leadership skills among fellows, and how its training curriculum would prepare fellows for the fellowship program.

a. In addition to answering the latter question, the applicant must include other organizations it may use to help develop the curriculum, if necessary. If the applicant does not plan to include other organizations, it must explain why it thinks the curriculum that it has developed meets the needs of the fellowship program. The applicant also must list the types of training it plans to have fellows undertake (e.g., workshops, classroom training, etc.) including potential instructors or speakers, and how it plans to recruit qualified instructors and speakers. The applicant must describe the curriculum and the type of materials it plans to develop to train fellows and if applicable, describe any certifications it might offer to fellows.

b. The applicant must explain how it will develop the orientation training for fellows and include a description of the types of materials it plans to develop to train fellows.

c. The applicant must describe the types of site visits it plans to undertake to enhance the learning experience of fellows. The applicant should also explain how it plans to identify, develop and/or implement any additional trainings it thinks would be helpful in the fellowship program.

2. Activity 1 & Activity 2 (5 points). As referenced in III.A.1.a *Leveraging,* HUD recognizes that the full cost of the program will likely exceed the $2.5 million granted under the RFQ. Nevertheless, HUD is requesting that the applicant indicate how it will use the $2.5 million by providing a budget table showing how funds will be budgeted for each activity for years 1 and 2, and indicate on the chart, who in the organization will be responsible for managing the funds.

a. In addition, as referenced in section III.A.1 *Payment of Fellows,* HUD recognizes that the cost of the fellow stipends under the fellowship program is unknown as HUD is in the process of negotiating the stipend share between what the pilot cities and the fellowship program will each pay. For your budget, please include a category for fellow stipends for years 1 and 2. HUD anticipates that fellows will be paid $60,000 per year (for a total of $120,000 for years 1 and 2 for each fellow). Please assume that the program will pay 75 percent of this stipend for years 1 and 2 (this amounts to $45,000 for each year). Given your proposed budget, HUD wants to see the maximum number of fellows that could be funded with the $2.5 million grant.

B. Project Completion Schedule (5 Points)

1. For each activity, the applicant must provide a table with the project completion schedule that includes milestones for the 32 month period (see II.B. *period of expenditure* and II.C.3 *reporting requirements*).

C. Performance and Monitoring (5 Points)

1. HUD grantees must have a plan for monitoring and funds control plan for all program activities to ensure successful performance. This includes an internal audit function. An internal audit function will continually examine potentially risky areas of program and financial operations and management and provide regular and valuable feedback to program managers and to those who hold them accountable. This feedback will include identification of risky management practices and missing or ineffective internal controls, areas that are not in compliance with program requirements, and ineffective implementation of established policies. The end result is the establishment of corrective actions. For the activity(s) the applicant is applying for in this factor, the applicant must:

a. Describe your monitoring and funds control plan.

b. Describe how you will meet the internal audit requirement and how corrective actions will be implemented. Specifically identify the position(s) and agency responsible for internal audit.

Rating Factor 3: Leveraging of Other Funds (20 Points): HUD does not require the applicant to have matching funds to be awarded a grant from this RFQ. However, as referenced in III.A.1.a *Leveraging,* HUD expects that the applicant that is awarded the grant will secure additional funding support from other philanthropic organizations. In this rating factor, HUD would like to know the applicant's experience in securing philanthropic support and its ability to leverage existing funds.

1. In this factor, the applicant must describe its success in securing philanthropic support for projects similar or related to any or all of the activities the applicant is applying for in the RFQ.

2. The applicant must also describe its plans for reaching out to other philanthropic organizations or private institutions, and fundraising activities it plans to undertake if granted funds from the RFQ.

3. The applicant must indicate, where appropriate, if it currently has commitments of additional funds from other philanthropic organizations or private institutions and how those funds might be leveraged for this program.

IV. Award Administration Information

A. Award Notices

HUD will send written notifications to both successful and unsuccessful applicants. A notification sent to a successful applicant is not an authorization to begin performance. Upon notification that an applicant has been selected for award, HUD will request additional information to be submitted or may work with the applicant to amend information that was already submitted as part of the application.

B. Code of Conduct

After selection, but prior to award, applicants selected for funding will be required to provide HUD with their written Code of Conduct if they have not previously done so and it is not recorded on the HUD Web site at: *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm.*

C. Administrative and National Policy Requirements

After selection for funding but prior to award, applicants must submit financial and administrative information to comply with applicable requirements. These requirements are found in 24 CFR part 84 for all organizations, except states and local governments whose requirements are found in 24 CFR part 85. Cost principles requirements are found at OMB Circular A–122 for nonprofit organizations, OMB Circular A–21 for institutions of higher education, OMB Circular A–87 for states and local governments, and at 48 CFR 31.2 for commercial organizations. Applicants must submit a certification

from an Independent Public Accountant or the cognizant government auditor, stating that the applicant's financial management system meets prescribed standards for fund control and accountability.

D. Federal Funding Accountability and Transparency Act of 2006

Applicants selected for funding will be required to report first sub-grant award and executive compensation information, where both their initial award is $25,000 or greater, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282). The prime grant awardees will have until the end of the month plus one additional month after an award or sub-grant is obligated to fulfill the reporting requirement. The Federal Funding Accountability and Transparency Act (FFATA) of 2006 calls for the establishment of a publicly available web site to disclose the use of Federal finance assistance.

a. The Act requires the reporting of the following data for first-tier sub-grants of $25,000 or more:

(1) Name of entity receiving award;
(2) Amount of award;
(3) Funding agency;
(4) NAICS code for contracts/CFDA program number for grants;
(5) Program source;
(6) Award title descriptive of the purpose of the funding action;
(7) Location of the entity (including congressional district);
(8) Place of performance (including congressional district);
(9) Unique identifier of the entity and its parent; and
(10) Total compensation and names of top five executives (same thresholds as for primes).

b. The Transparency Act also requires the reporting of the Total Compensation and Names of the top five executives in either the prime awardee or a sub-awardee's organization if:

(1) More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25M annually; and
(2) Compensation information is not already available through reporting to the SEC.

The statute exempts from reporting any sub-awards less than $25,000 made to individuals or to an entity whose annual expenditures are less than $300,000. OMB has published Interim Final Guidance to agencies regarding the FFATA subrecipient reporting requirements in the **Federal Register** on September 14, 2010 (75FR55663.)

E. Equal Employment Opportunity

All contracts under the fellowship program shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

F. Additional Information

This issuance does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321)."

Dated: August 17, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

Appendix A: Fellowship Placement Pilot Program—Fellows Criteria for Selection

The fellows selection of the fellowship program will be open nationally to all qualified applicants. The Administrator will help develop the application and selection criteria for new recruits. The Administrator will conduct the competition for fellows.

At minimum, core perquisites must require that candidates:

- Have 3–5 years of work experience, where candidates with graduate degrees are preferred;
- Make a 2-year commitment;
- Have prior experience in the area of community development, economic development, community or other public service, or related field;
- Be a problem solver, critical thinker and potential manager;
- Have a proven track record of entrepreneurship or social entrepreneurship, ability to work through bureaucracies to get things done; and
- Demonstrate a commitment and passion to public service.

In addition, applicants will be asked to rank order their location choices, and to articulate their interest in, or connection to any particular location(s). The selected Administrator may explore giving preference to candidates that already live in a pilot city.

The selection process for fellows may involve multiple rounds of review that will culminate to several in-person group interviews. After the in-person interviews, a selection committee will make the final selection decisions. Fellows that best match the needs of the pilot cities based on their existing area of knowledge and skill set will be selected for the program. To ensure fellows are properly matched to the needs of each pilot city, the selection process will include a review of the results from the city assessments that were initially conducted for each pilot city before selection.

Appendix B—Checklist of Documents to Submit

Document	Check box
1. Application SF424 (submitted by single third party or the lead third party in a partnership).	
2. SF424sup (submitted by all third parties, regardless of whether they are applying as a partnership or a single third party).	
3. SF–LL (submitted by all third parties that conduct lobby activities, regardless of whether they are applying as a partnership or a single third party).	
4. Responses to Rating Factors: • For single applicants the page limit is 18. • For partnerships, the page limit is 22.	
5. Appendixes: Appendix A: Organization Chart & Contact List for key points of contact. Appendix B: Resumes. Appendix C: References.	

APPENDIX B—CHECKLIST OF DOCUMENTS TO SUBMIT—Continued

Document	Check box
Appendix D: Budget Table. Appendix E: Project Completion Schedule.	

Appendix C: Instructions on How To Secure a DUNS Number

The SF424 and SF424 sup forms will require you to specify a DUNS number that will allow the Federal government to track how Federal grant money is allocated.

All applicants applying to administer the Fellowship Placement Pilot Program are required to get a DUNS number. For the SF–424 form, if an applicant is applying as a partnership, only the lead third party's DUNS number should be listed.

A DUNS number identifies your organization, and it is very easy to secure one.

Below are the brief instructions on how to secure a DUNS number. To view these instructions online, you can also visit: *http://www.grants.gov/applicants/org_step1.jsp*

Has my organization identified its Data Universal Number System (DUNS)?

Ask the grant administrator, chief financial officer, or authorizing official of your organization to identify your DUNS number.

If your organization does not know its DUNS number or needs to register for one, visit Dun & Bradstreet Web site: Register or search for a DUNS number: *http://fedgov.dnb.com/webform/displayHomePage.do [EXIT Disclaimer]*

Purpose of This Step

The federal government has adopted the use of DUNS numbers to track how federal grant money is allocated. DUNS numbers identify your organization.

How long should it take?

If requested over the phone, DUNS is provided immediately. Webform requests take 1 to 2 business days.

What is a DUNS number and why do I need obtain one?

The Data Universal Number System (DUNS) number is a unique nine-character number that identifies your organization. It is a tool of the federal government to track how federal money is distributed. Most large organizations, libraries, colleges and research universities already have DUNS numbers. Ask your grant administrator or chief financial officer to provide your organization's DUNS number.

List of Information you will need to obtain a DUNS number (if your organization does not already have one):

- Name of organization
- Organization address
- Name of the CEO/organization owner
- Legal structure of the organization (corporation, partnership, proprietorship)
- Year the organization started
- Primary type of business
- Total number of employees (full and part time)

If your organization does not have a DUNS number, use the Dun & Bradstreet (D&B) online registration to receive one free of charge.

If your organization is located outside the United States, you can request and register for a DUNS number also online via web registration.

Note: Obtaining a DUNS number places your organization on D&B's marketing list that is sold to other companies. You can request not to be added to this list during your application.

[FR Doc. 2011–21439 Filed 8–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[USGS–GX11LR000F60100]

Agency Information Collection Activities: Comment Request for the Nonferrous Metals Surveys (30 Forms)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1028–0053).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection request (IC) described below. This collection consists of 30 forms. The revision includes adding the following forms: USGS Form 9–4054–M and USGS Form 9–4061–A; and removing the following form: USGS Form 4128–A. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on March 31, 2012.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before October 24, 2011.

ADDRESSES: Please submit a copy of your comments to Shari Baloch, Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 807, Reston, VA 20192 (mail); 703–648–7174 (telephone); 703–648–7199 (fax); or *smbaloch@usgs.gov* (e-mail). Reference Information Collection 1028–0053 in the subject line.

FOR FURTHER INFORMATION CONTACT: Carleen Kostick at 703–648–7940 (telephone); *ckostick@usgs.gov* (e-mail); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents will use these forms to supply the USGS with domestic production and consumption data of nonferrous and related nonfuel mineral commodities, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbook, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

II. Data

OMB Control Number: 1028–0053.
Form Number: Various (30 forms).
Title: Nonferrous Metals Surveys.
Type of Request: Revision of a currently approved collection.
Affected Public: Private sector: U.S. nonfuel minerals producers of nonferrous and related metals.
Respondent Obligation: Voluntary.
Frequency of Collection: Monthly, quarterly, and annually.
Estimated Number of Annual Responses: 4,971.
Annual Burden Hours: 3,683 hours. We expect to receive 4,971 annual responses. We estimate an average of 20 minutes to 2 hours per response.
Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this IC on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is

useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Shari Baloch (703–648–7174).

Dated: August 16, 2011.

John H. DeYoung, Jr.,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2011–21479 Filed 8–22–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for the Bureau of Indian Education Adult Education Program; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Request for Comments.

SUMMARY: As required by the Paperwork Reduction Act, the Bureau of Education (BIE) is requesting comments on renewal of OMB approval to collect information for the BIE Adult Education Program. The information collection is currently authorized by OMB Control number 1076–0120, which expires December 31, 2011.

DATES: Submit comments on or before October 24, 2011.

ADDRESSES: You may submit comments on the information collection to Brandi Sweet, U.S. Department of the Interior, Bureau of Indian Education, 1849 C Street, NW., Washington, DC 20240; e-mail: *Brandi.Sweet@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Brandi Sweet, U.S. Department of the Interior, Bureau of Indian Education; telephone (202) 208–5504.

SUPPLEMENTARY INFORMATION:

I. Abstract

Bureau of Indian Education (BIE) is seeking renewal of the approval for the information collection conducted under 25 CFR part 46, subpart C, Program Requirements of the Adult Education Program, to determine eligibility of Indian applicants and to prioritize programs. Approval for this collection expires on December 31, 2011. This information includes an application form. No changes are being made to the form or to the approved burden hours for this information collection.

II. Request for Comments

BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0120.

Title: Bureau of Indian Affairs Adult Education Program Annual Report Form.

Brief Description of Collection: Submission of this information allows BIA to determine applicant eligibility of Indian applicants based upon the criteria referenced in 25 CFR 46, Subpart C (Program Requirements of the Adult Education Program). BIE annually collects information to determine eligibility of Indian applicants and to prioritize programs. The information helps manage the resources available to provide education opportunities for adult Indians and Alaska Natives to complete high school graduation requirements and gain new skills and knowledge for self-enhancement.

Type of Review: Extension without change of a currently approved collection.

Respondents: Individuals (Tribal Adult Education Program Administrators).

Number of Respondents: 70 per year, on average.

Total Number of Responses: 70 per year, on average.

Frequency of Response: Once per year.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden: 280 hrs.

Dated: August 17, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–21549 Filed 8–22–11; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT02000.L12200000.MA0000.241A.00]

Notice of Intent To Prepare a Resource Management Plan (RMP) Amendment and Associated Environmental Assessment for the Castle Rocks and Cedar Fields Areas, Burley Field Office, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Burley Field Office, Burley, Idaho intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for the Cassia and Monument RMPs to consider closing BLM-managed lands to certain activities to protect cultural and historic properties, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP

amendment with an associated EA. Comments on issues may be submitted in writing until September 22, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/id/st/en/info/nepa.html.* In order to be included in the EA, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments on issues and planning criteria related to Castle Rocks and Cedar Fields Land Use Plan Amendment by any of the following methods:

- *Web site: http://www.blm.gov/id/st/en/info/nepa.html*
- *E-mail: id_burley_fo_@blm.gov*
- *Fax:* 208–677–6699
- *Mail:* 15 East 200 South, Burley, Idaho 83318

Documents pertinent to this proposal may be examined at the Burley Field Office.

FOR FURTHER INFORMATION CONTACT: Contact Dennis Thompson, Outdoor Recreation Planner, for further information and/or to have your name added to the Burley BLM's mailing list, at telephone 208–677–6664; address 15 East 200 South, Burley, Idaho 83318; or e-mail *dennis_thompson@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: This document provides notice that the BLM Field Office, Burley Idaho, intends to prepare an RMP Amendment with an associated EA for the Cassia and Monument RMPs, announces the beginning of the the scoping process, and is seeking public input on issues and planning criteria. The planning area is located in Cassia and Power Counties, Idaho and encompasses approximately 1,556 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. The BLM has identified the following preliminary issues: the potential for damage to cultural resources within the American Falls Archeological District at Cedar Fields from rock climbing and other recreational activities; potential adverse affects on Historic Properties at Castle Rocks from rock climbing and other recreational activities; and the impact that closures to certain activities would have on recreational climbing in the area.

At Cedar Fields, ongoing climbing activities have the potential to damage cultural resources located within an Archeological District. In 2010, the BLM prepared an EA to address similar concerns at Castle Rocks. The proposed action within the Castle Rocks EA would have allowed limited climbing and trail construction. However, due to potential adverse cumulative effects of rock climbing activities on Historic Properties (as defined in 36 CFR 800.5(a)(1) and 800.16(l)(1)), a Finding of No Significant Impact (FONSI) could not be reached for the Castle Rocks EA (EA ID–220–2009–EA–3768). The EA was finalized on March 29, 2010, sent out to interested members of the public, and posted to the BLM Idaho Web site. Subsequently, a temporary closure notice was published in the **Federal Register** in November 2010, which closed BLM-managed lands in the Castle Rocks Inter-Agency Recreation Area to climbing, staging, camping, and construction of new trails. This closure will remain in effect until November 16, 2012.

The RMP Amendment and associated EA will consider the permanent designation of no climbing, no staging, no camping, and no construction of new trails on BLM-managed lands at Castle Rocks Inter-Agency Recreation Area and at Cedar Fields. If a closure is necessary to protect Historic Properties at Castle Rocks and cultural resources in the Archeological District at Cedar Fields, the BLM will make a decision about whether to amend the Cassia and Monument RMPs and will address allowable uses of resources, and intensity and limits of use.

You may submit comments on issues and planning criteria for the Plan Amendments in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 30 days after the last public meeting, whichever is later. 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.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: minerals and geology, outdoor recreation, archaeology, wildlife, and soils.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Michael Courtney,

Field Manager.

[FR Doc. 2011–21560 Filed 8–22–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYR05000 L51100000.GN0000. LVEMK11CW630]

Notice of Intent To Prepare an Environmental Impact Statement for the Sheep Mountain Uranium Project, Fremont County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) and the Federal Land Policy and Management Act, as amended (FLPMA), and in response to a proposal filed by Titan Uranium USA, Inc. (Titan), the Bureau of Land Management (BLM), Lander Field Office, Wyoming, intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments regarding issues and resource information for the proposed Sheep Mountain Uranium Project (the Project) in Fremont County, Wyoming. The Project is a conventional uranium exploration and development project employing open pit and underground mining methods and using heap leach methods for uranium recovery.

DATES: This notice initiates the public scoping process. The BLM can best consider public input if comments and resource information are submitted within 45 days of publication of this notice. To provide the public with an opportunity to review the proposal and project information, the BLM will host public meetings in Lander, Riverton, and Jeffrey City, Wyoming. The BLM

will announce the dates, times, and locations for these meetings at least 15 days prior to each event. Announcements will be made by news release to the news media, individual letter mailings, and posting on the project Web site listed below. Project information and documents including the submitted Plan of Operations also will be available on the Project Web site.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: Sheep_Mountain_Uranium_EIS_WY@BLM.gov*
- *Mail:* Lander Field Office, Attn: Kristin Yannone, Project Manager, 1335 Main Street, Lander, Wyoming 82520
- *Project Web site: http://www.blm.gov/wy/st/en/info/NEPA/documents/lfo/sheepmtn.html*

Documents pertinent to this proposal may be examined at the Lander Field Office.

FOR FURTHER INFORMATION CONTACT: Kristin Yannone, Project Manager, telephone 307–332–8400; address 1335 Main Street, Lander, WY 82520; e-mail *Kristin_Yannone@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Project is located 8 road miles south of Jeffrey City, Wyoming in Fremont County, Sixth Principal Meridian, Township 28 North, Range 92 West, Sections 16, 17, 20, 21, 22, 27, 28, 29, 32, and 33 in an area of historic uranium mining development, the earliest of which dates back to the 1950s. This area lies 62 road miles southeast of Riverton, Wyoming and 105 road miles west of Casper, Wyoming in the Crooks Gap Mining District.

The project area, which is the same area covered by an existing State of Wyoming mining permit, covers 3,625 surface acres of mixed ownership including 2,313 acres administered by the BLM, 768 acres under State ownership, and 544 acres of private lands. The project area includes 2,836 acres of Federal mineral estate. The BLM Lander Field Office will serve as the lead office for preparing the environmental analysis of the potential impacts of authorizing the surface disturbance for the Project on public lands under the BLM's regulations at 43 CFR part 3809. The potential impacts of constructing and operating a uranium recovery facility within the project boundary will be included in the BLM's analysis. This uranium recovery facility requires a Source Materials License from the U.S. Nuclear Regulatory Commission (NRC) to operate in addition to a surface use authorization from the BLM. The BLM's analysis of any potential impacts from granting surface use authorization for the uranium recovery facility are in addition to the environmental analysis conducted by the NRC as part of its permitting process.

On June 16, 2011, Titan submitted its formal Plan of Operations in accordance with the BLM's surface management regulations at 43 CFR 3809 to develop a conventional mining and heap leach recovery operation.

The purpose of the Project is to identify mining reserves and extract 1.5 million to 2 million pounds of uranium per year over an anticipated project life of 15–20 years. The Project would use conventional open pit and modified room and pillar underground mining methods to extract the ore. Uranium recovery would be performed on-site using heap leach methods and a processing facility to produce yellowcake (uranium oxide-U_3O_8). Two new declines would be advanced from the surface to access existing underground workings for rehabilitation and further mine development. A series of double-lined pads and ponds would be constructed for the heap-leach facility and a new large building would house the site's processing plant, with a smaller structure for administration and shop facilities.

A total of 466 acres would be disturbed over the life of the mine. This disturbance would consist of 285 acres of new disturbance and 181 acres of existing disturbance which would be re-disturbed. The 466 acres includes 104 acres for the heap leaching and plant operations and 362 acres for mining operations. No new disturbance would be required for access roads.

Both the surface and underground mining may use diesel-powered equipment and blasting to extract and transport the ore to the heap-leach facility and the overburden materials to their temporary and final storage locations. All pit overburden would be temporarily stockpiled on the surface during the initial phases of mining. During later pit mining phases, the overburden and waste material would be stored within previously mined portions of the pit.

After being received at the processing facility, ore would be placed on the double-lined leach pads using a radial belt conveyor. The heap-leach-recovery method applies a sulfuric acid solution (H_2SO_4) through low-flow emitters on top of the heap for extraction of the uranium mineral from the ore. After the solution containing uranium reaches the desired concentration, it would then be processed through either an ion-exchange system or a solvent extraction system. Spent solutions and process-liquid wastes would be managed in double-lined evaporation ponds on-site, no wastes would be discharged from the site. Individual heaps would be reclaimed in-place after the ore has been fully leached, rinsed of leachate, and drained.

The Project activities would include the drilling of exploratory boreholes, construction of open mine pits, excavation of underground mine declines (low angle access tunnels) and underground mine workings using modified room and pillar methods, rehabilitation of existing mine shafts for ventilation, installation of monitoring wells, construction of uranium processing and waste-water treatment facilities, and development of new and improvement of existing access roads. Interim reclamation activities would be performed to minimize the amount of surface disturbance at any one time.

Surface disturbance would be phased over several years, depending on the uranium production rate and the availability of mine construction equipment and personnel. Titan estimates that approximately 40 acres each year would be disturbed, undergo interim reclamation, and subsequently be returned to wildlife habitat to BLM and State of Wyoming reclamation standards. Final surface reclamation would also be required by regulatory agencies and assured by bonds.

At the end of surface mining, all stockpiled overburden would be returned to the pits and the surface regraded with top soil and seeded for revegetation. All underground mining spoils would remain underground and would be reclaimed within the underground workings. Final reclamation plans include placing all pit mine overburden and spoils back in the mine pits, plugging and abandoning all ventilation shafts and access tunnels, removing all ponds and buried piping, and regrading and revegetating the disturbed surface with native plant species approved by the regulatory agencies. After vegetation has been reestablished, the mine surface would be returned to its premining use of livestock grazing and wildlife habitat or any uses consistent with the then-applicable land use plan.

Depending upon the residual radiological hazards present within the millsite restricted area, administrative jurisdiction of the reclaimed heaps may be required to be transferred to the Department of Energy for long-term custodial care until contamination is deemed no longer a threat to public health and safety.

Titan estimates that the Project would employ a mix of full-time personnel and temporary contractors throughout the life of the mine. During the construction of each mine unit, 20 to 30 full-time employees plus 80 contractors would be employed. During mining operations, about 210 full-time employees plus another 40 contractors would be required. It is likely that the majority would live in Riverton and Lander. The Project is projected to provide an economic benefit through a variety of taxes paid to Federal, State, and local governments to include employee income taxes, severance taxes, property taxes, and sales taxes.

The Project is in conformance with the Lander RMP/Final EIS and ROD, 1987. During the preparation of the EIS, interim exploration and development will be subject to development guidelines and decisions made in applicable NEPA documents, including the Lander RMP and any subsequent revisions. The EIS will analyze the environmental consequences of implementing the Project as proposed and alternatives, including a No Action Alternative. Other alternatives that may be considered in detail could include, for example, reclamation schedule adjustments, or perhaps a different pace of development. The Project would not impair lands with wilderness characteristics.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: air resources, water resources, wildlife and special status species, vegetative resources, grazing, concerns about risks from selenium, heavy metals and uranium, and long-term post-closure management.

The BLM will utilize and coordinate the NEPA commenting process to help fulfill the public involvement process under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders who may be interested in or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Donald A. Simpson,

State Director.

[FR Doc. 2011–21563 Filed 8–22–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–11–L13100000–FI0000–P; NDM 94247, NDM 94249, and NDM 94263]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NDM 94247, NDM 94249, and NDM 94263

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Pride Energy Company timely filed a petition for reinstatement of competitive oil and gas leases NDM 94247, NDM 94249, and NDM 94263, Billings County, ND. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties, $10 per acre and 16⅔ percent respectively. The lessee paid the $500 administration fee for the reinstatement of the lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre; and
- The increased royalty of 16⅔ percent.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091, *Teri_Bakken@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.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2011–21568 Filed 8–22–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF INTERIOR

National Park Service

Final Environmental Impact Statement on Nabesna Off-Road Vehicle Management Plan, Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C) the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) on Off-Road Vehicle Management in the Nabesna District of Wrangell-St. Elias National Park and Preserve. The FEIS evaluates the environmental impacts of a preferred alternative and four action alternatives for management of off-road vehicles in the Nabesna District. The purpose is to consider opportunities for appropriate and reasonable access to wilderness and backcountry recreational activities, which also accommodates subsistence and access to inholdings; while protecting scenic quality, fish and wildlife habitat, and other park resource values. A no action alternative is also evaluated. This notice officially begins the 30-day waiting period before the Record of Decision can be issued.

ADDRESSES: Copies of the FEIS will be available for public review at *http://parkplanning.nps.gov/wrst.* Hard copies are available at park headquarters, located at Milepost 106.8 on the Richardson Highway, or may be requested from Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, PO Box 439, Copper Center, Alaska 99573.

SUPPLEMENTARY INFORMATION: This FEIS evaluates the impacts of a range of alternatives for managing off-road vehicles (ORVs) for recreational and subsistence use in the Nabesna District of Wrangell-St. Elias National Park and Preserve. The nine trails under evaluation were in existence at the time the 13.2-million-acre park and preserve was established in 1980. The use of ORVs was determined to be traditionally employed for subsistence activities in the 1986 General Management Plan. Beginning in 1983, the park issued permits for recreational ORV use of these established trails, initially in accordance with 36 CFR 13.14(c) which was replaced by 43 CFR 36.11(g)(2) in 1986. The park issues 200 recreational ORV permits per year on average. The trails also provide for subsistence ORV use and access to inholdings. On June 29, 2006, the National Parks Conservation Association, Alaska Center for the Environment, and The Wilderness Society (Plantiffs) filed a lawsuit against NPS in the United States District Court for the District of Alaska regarding recreational ORV use on the nine trails that are the subject of this EIS. The plaintiffs challenged the NPS issuance of recreational ORV permits asserting that NPS failed to make the required finding that recreational ORV use is compatible with the purposes and values of the Park and Preserve. They also claimed that the NPS failed to prepare an environmental analysis of recreational ORV use as required by NEPA.

In the May 15, 2007, settlement agreement, NPS agreed to endeavor to complete an EIS, Record of Decision (ROD) and compatibility determination by December 31, 2010 (this has been extended to December 31, 2011), during which time recreational use of ORVs on the Suslota Lake Trail, Tanada Lake Trail, and a portion of the Copper Lake Trail is permitted only when the ground is frozen.

A Draft Environmental Impact Statement (DEIS) was published in August 2010 and made available for a 90-day public comment period. During the 90-day public comment period, five public meetings were held in Fairbanks, Anchorage, Tok, Slana, and Copper Center, Alaska. The purpose of the public meetings was to provide information on the DEIS, answer questions, and facilitate public comment on the document. The NPS received 153 comment letters from various agencies, organizations, and individuals. In response to public comment, the FEIS analyzes a sixth NPS preferred alternative that combines elements of Alternatives 4 and 5 from the DEIS. Additionally, the FEIS responds to substantive comments in Chapter 5 and numerous changes were made to the DEIS as a result of public comment. These changes are documented in the FEIS.

Alternative 1 evaluates the impacts of no action and describes conditions under the lawsuit settlement. Recreational ORV use would be permitted on all trails except Suslota, Tanada Lake, or Copper Lake trails, until the ground is frozen. There would be no change to subsistence ORV use and no trail improvements.

Alternative 2 would permit recreational ORV use on all nine trails. There would be no change to subsistence ORV use and no trail improvements.

Alternative 3 would prohibit recreational ORV use. Subsistence ORV use would continue, and some trail improvements would be made. Trail conditions would be monitored, and adaptive management steps would be taken to prevent further resource degradation.

Alternative 4 would permit recreational ORV use on designated trails in the preserve (Caribou Creek, Lost Creek, Trail Creek, Soda Lake, Reeve Field) once improvements are made, but not in the park (Tanada Lake, Copper Lake, Boomerang). All trails (except Suslota) would be improved to at least a maintainable condition through trail hardening, tread improvement, or constructed re-routes. Subsistence ORV use would continue subject to monitoring and management activities in the same manners as alternative 3.

Alternative 5 would permit recreational ORV use on all nine trails. All trails (except Suslota) would be improved to at least a maintainable condition as under alternative 4. Until improved, recreational ORV use would not be permitted on trails with the most resource degradation (Tanada Lake, Suslota, and Copper Lake) and subsistence ORV use would continue to be subject to monitoring and adaptive management steps in the same manners as alternative 3, and would be confined to trails in park wilderness.

Alternative 6 is the NPS preferred alternative. All trails would be improved to at least a maintainable condition. After trail improvement, recreational ORV use would be permitted on trails in the national preserve (Suslota, Caribou Creek, Trail Creek, Lost Creek, Soda Lake, and Reeve Field) but not on trails in the national park (Boomerang, Tanada Lake, Copper Lake). Subsistence ORV use would continue to be subject to monitoring and adaptive management steps in the same manners as alternative 3 and would be confined to designated trails in park wilderness.

FOR FURTHER INFORMATION CONTACT: Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, PO Box 439, Copper Center, Alaska 99573. *Telephone:* 907–822–7276.

Sue E. Masica,

Regional Director, Alaska.

[FR Doc. 2011–21566 Filed 8–22–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Captain John Smith Chesapeake National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice that the Advisory Committee on the Captain John Smith Chesapeake National Historic Trail will hold a meeting. Designated through an amendment to the National Trails System Act (16 U.S.C. 1241), the trail consists of "a series of water routes extending approximately 3,000 miles along the Chesapeake Bay and its tributaries in the States of Virginia, Maryland, Delaware, and in the District of Columbia," tracing the 1607–1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should register via e-mail at *Christine_Lucero@nps.gov* or *telephone:* (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Advisory Council is John Maounis, Superintendent, Captain John Smith National Historic Trail, *telephone:* (410) 260–2471.

DATES: The Captain John Smith Chesapeake National Historic Trail Advisory Council will meet from 10 a.m. to 4:30 p.m. on Wednesday, September 14, 2011.

ADDRESSES: The meeting will be held at the Virginia Commonwealth University Rice Center, 3701 John Tyler Memorial Highway, Charles City, VA 23030. For more information, please contact the NPS Chesapeake Bay Office, 410 Severn Avenue, Suite 314, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Christine Lucero, Partnership Coordinator for the Captain John Smith Chesapeake National Historic Trail, *telephone:* (757) 258–8914 or *e-mail: Christine_Lucero@nps.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Captain John Smith Chesapeake National Historic Trail Advisory Council for the purpose of providing advice on the implementation of the Captain John Smith Chesapeake National Historic Trail Action Plan and reviewing the preliminary Concept Plan of the James River Segment of the Captain John Smith Chesapeake National Historic Trail. The Committee meeting is open to the public. Members of the public who would like to make comments to the Committee should preregister via e-mail at *Christine_Lucero@nps.gov* or *telephone:* (757) 258–8914; a written summary of comments should be provided prior to the meeting. Comments will be taken for 30 minutes at the end of the meeting (from 4 p.m. to 4:30 p.m.). Before including your address, telephone number, e-mail address, or other personal indentifying 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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: August 1, 2011.

John Maounis,

Superintendent, Captain John Smith National Historic Trail, National Park Service, Department of the Interior.

[FR Doc. 2011–21565 Filed 8–22–11; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Toxic Substances Control Act

Notice is hereby given that on August 15, 2011 a proposed Consent Decree in *United States and the State of Michigan* v. *Hansons Window and Construction, Inc.*, Civil Action No. 2:11–cv–13561–JCO–MKM was lodged with the United States District Court for the Eastern District of Michigan. The consent decree settles claims against a window manufacturing and replacement corporation located outside of Detroit, Michigan. The claims were brought on behalf of the Environmental Protection Agency ("U.S. EPA") under the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, and on behalf of the State of Michigan Department of Community Health ("Michigan DCH") under the Michigan Lead Abatement Act, 1998 Mich. Pub. Acts 219 § 1 *et seq.*, Mich. Comp. Laws Ann. § 333.5451 *et seq.* The Plaintiffs alleged in the complaint that the Settling Defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by Title IV, section 406(b) of the Toxic Substances Control Act.

Under the Consent Decree, the Settling Defendant will pay to the United States a civil penalty of $50,000, will certify that it is now in compliance and will develop a compliance program to ensure on-going compliance with residential lead based paint hazard notification requirements in the future. As part of its settlement with the State of Michigan, the Settling Defendant will also perform a Supplemental Environmental Project ("State SEP"). For the State SEP, the Settling Defendant will provide $250,000 worth of windows to the State of Michigan for installation in housing built before 1978.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Michigan* v. *Hansons Window and Construction Inc.*, D.J. Ref. # 90–5–1–1–08900.

During the public comment period, the proposed Consent Decree, may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $11.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Karen Dworkin,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–21528 Filed 8–22–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on August 17, 2011, a Consent Decree in *United States of America* v. *Erie Coke Corporation,* Civil Action No. 1:09–cv–00240–SJM was lodged with the United States District Court for the Western District of Pennsylvania.

In this action, the United States sought injunctive relief and penalties against Erie Coke Corporation ("Erie Coke") pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged Clean Air Act violations and violations of the Pennsylvania State Implementation Plan at a coke manufacturing facility in Erie, Pennsylvania owned by Erie Coke. Originally, the complaint was filed jointly with the Commonwealth of Pennsylvania Department of Environmental Protection, but the Commonwealth settled separately with Erie Coke and a consent judgment was entered in the Commonwealth Court of Pennsylvania (the "State Agreement").

Under the terms of the settlement with the United States, the settling defendant will: (1) Pay a $300,000 civil penalty to the United States; and (2) apply interim measures to control visible air emissions until the Erie Coke facility comes into compliance with the State Agreement.

The Department of Justice will receive comments relating to the Consent

Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or submitted via e-mail to *pubcomment-ees.enrd@usdoj.gov*, and should refer to *United States* v. *Erie Coke Corporation*, D.J. Ref. No. 90–5–2–1–09614.

The Consent Decree may be examined at the Offices of the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–21462 Filed 8–22–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps 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. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Notice to Examinee, Work Experience and Career Exploration (WECEP) Regulations, 29 CFR 570.35a. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 24, 2011.

ADDRESSES: You may submit comments identified by Control Number 1235–0011, by either one of the following methods: *E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulation, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulation, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Act (FLSA) section 3(l), 29 U.S.C. 203(l) establishes a minimum age of 16 years for most nonagricultural employment but allows the employment of 14- and 15-year-olds in occupations other than manufacturing and mining or deemed hazardous, if the Secretary of Labor determines such employment is confined to (1) periods that will not interfere with the minor's schooling and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c), 29 U.S.C. 211(c), requires all employers covered by the FLSA to make, keep, and preserve records of their employees' wages, hours, and other conditions and practices of employment. Regulations issued by the Secretary of Labor prescribe the recordkeeping and reporting requirements for these records. Subpart C of Regulations 29 CFR Part 570—Child Labor Regulations, Orders, and Statements of Interpretation—sets forth the employment standards for 14- and 15-year-olds (CL Reg. 3). Regulations 29 CFR 570.35a contain the requirements and criteria for the employment of 14- and 15-year-olds in specific occupations pursuant to a school-supervised and school-administered WECEP under the conditions CL Reg. 3 otherwise prohibits. In order to utilize the CL Reg. 3 WECEP provisions, Regulations 29 CFR 570.35a(b)(2) requires a state educational agency to file an application for approval of a state WECEP program as one not interfering with schooling or with the health and well-being of the minors involved. Regulations 29 CFR 570.35a(b)(3)(vi) requires that a written training agreement be prepared for each student participating in a WECEP and that such agreement be signed by the teacher-coordinator, the employer, and the student. The regulation also requires the student's parent or guardian to sign or otherwise consent to the agreement in order for it to be valid. Regulations 29 CFR 570.35a(b)(4)(ii) requires state education agencies to keep a record of the names and addresses of each school enrolling WECEP students and the number of enrollees in each unit. The state or local educational agency office must keep a copy of the written training agreement for each student participating in the WECEP. The records and copies must be maintained for three (3) years from the date of each student's enrollment in the program. This information collection is currently approved for use through December 31, 2011.

II. Review Focus

The Department of Labor 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The DOL seeks approval for the extension of this currently approved information collection in order to carry out its responsibility to ensure compliance with the youth employment provisions of the FLSA and its regulations. Without this information, the Administrator would have no means to determine if the proposed program meets the regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Titles: Work Experience and Career Exploration Programs (WECEP) Regulations, 29 CFR 570.35a.

OMB Number: 1235–0011.

Affected Public: State, Local, or Tribal Government.

Frequency: Biennially.

Total Respondents: 37.

Total Annual Responses: 14,287.

Average Time per Response:

Reporting:

WECEP Application—2 hours.

Written Training Agreement—1 hour.

Recordkeeping:

WECEP Program Information—1 hour.

Filing of WECEP Record and Training Agreement—One-half minute.

Total Burden Hours: 14,145.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3.29.

Dated: July 20, 2011.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretations.

[FR Doc. 2011–21529 Filed 8–22–11; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–076)]

National Environmental Policy Act: Launch of NASA Routine Payloads on Expendable Launch Vehicles

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability and request for comments on the draft environmental assessment ("Draft EA") for launch of NASA routine payloads on expendable launch vehicles.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA NEPA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared a Draft EA for launch of NASA routine payloads on expendable launch vehicles. For purposes of this Draft EA, NASA routine payloads include science instruments, spacecraft or technology demonstrations. This EA updates the *Final Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station Florida and Vandenberg Air Force Base California* published in June 2002. NASA missions covered by this Draft EA would be scheduled for launch at one of the proposed launch sites and would be within the total number of launch operations previously analyzed in launch vehicle and launch site NEPA documents. The proposed launches would occur from existing launch facilities at CCAFS, Florida, VAFB, California, the United States Army Kwajalein Atoll/Reagan Test Site (USAKA/RTS) in the Republic of the Marshall Islands (RMI), NASA's Wallops Flight Facility (WFF), Virginia, and the Kodiak Launch Complex (KLC), Alaska. The Cooperating Agencies on this Draft EA include the Federal Aviation Administration (FAA), the Air Force Space and Missile Systems Center, the U.S. Army Space and Missile Defense Command, and the National Oceanic and Atmospheric Administration (NOAA).

The Draft EA analyzes the potential environmental impacts associated with preparing and implementing launches of missions that are designated NASA routine payloads on U.S. expendable launch vehicles from existing U.S. facilities using established procedures. The NASA routine payloads meet rigorously defined criteria ensuring that the spacecraft and their operation would not present any new or substantial environmental and safety concerns. A Routine Payload Checklist is used to exclude missions from consideration as routine payloads if they: (1) Include any extraterrestrial sample return; (2) would be launched on a vehicle or from a launch site for which NASA has not completed NEPA compliance; (3) carry radioactive sources that could not be approved by the NASA Office of Safety and Mission Assurance Nuclear Flight Safety Assurance Manager or designee; (4) cause the manifested launch rate (per year) for a particular launch vehicle to exceed the rate previously approved and permitted at the launch sites; (5) require the construction of any new facilities (or substantial modification of existing facilities); (6) utilize hazardous materials in quantities exceeding the Envelope Payload Characteristics (EPCs); (7) utilize potentially hazardous material whose type or amount would not be covered by new or existing local permits; (8) release material other than propulsion system exhaust or inert gases into the atmosphere; (9) suggest the potential for any substantial impact on public health and safety not covered by this Draft EA; (10) have the potential for substantial effects on the environment outside the United States; (11) utilize an Earth-pointing laser system that does not meet the requirements for safe operations according to American National Standards Institute analysis techniques; (12) carry live or inactive disease-causing biological agents beyond Biological Safety Level 1; or (13) have the potential to create substantial public controversy related to environmental issues.

Payloads that fall within the Routine Payload Checklist would utilize materials, quantities of materials, launch vehicles, and operational characteristics that are consistent with normal and routine payload preparation and flight activities at these specified launch sites. Therefore, the environmental impacts of launching routine payloads would fall within the range of routine, ongoing, and previously documented impacts associated with approved programs that have been determined not to be significant. The purpose and need for

this proposed action is to fulfill NASA's mission for Earth exploration, space exploration, technology development, and scientific research. The scientific missions associated with NASA routine payloads could not be accomplished without launching orbital and interplanetary spacecraft.

DATES: Interested parties are invited to submit comments on the Draft EA in writing no later than 45 days from the date of publication of this notice in the **Federal Register.**

ADDRESSES: Comments should be submitted via electronic mail to: *routine-payload-ea@lists.nasa.gov.*

Comments may also be submitted via postal mail addressed to: George Tahu, NASA Program Executive, Science Mission Directorate, Planetary Science Division, Mail Stop 3V71, NASA Headquarters, 300 E Street, SW., Washington, DC 20546.

The Draft EA is available for review at *http://www.nasa.gov/green/nepa/routinepayloadea.html.*

The Draft EA may also be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546 (202–358–0167).

(b) Central Brevard Library and Reference Center, 308 Forrest Ave., Cocoa, FL 32922 (321–633–1792).

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(d) NASA, Goddard Space Flight Visitor's Center, 8463 Greenbelt Road, Greenbelt, MD 20771 (301–286–8981).

(e) Chincoteague Island Library, 4077 Main Street, Chincoteague, VA 23336 (757–336–3460).

(f) NASA WFF Technical Library, Building E–105, Wallops Island, VA 23337 (757–824–1065).

(g) Eastern Shore Public Library, 23610 Front Street, Accomac, VA 23301 (757–787–3400).

(h) Kodiak Library, 319 Lower Mill Bay Road, Kodiak, AK 99615 (907–486–8680).

(i) NASA Ames Research Center, Moffett Field, CA 94035 (650–604–3273).

(j) Grace Sherwood and Roi-Namur Libraries, P.O. Box 23, Kwajalein, Marshall Islands APO, A.P. 96555. (805–355–2015).

(k) Alele Public Library, P.O. Box 629, Majuro, Republic of the Marshall Islands 96960. (692–625–3372).

(l) Lompoc Public Library, 501 E. North Avenue, Lompoc, CA 93436 (850–875–8775).

(m) Santa Maria Public Library, 420 South Broadway, Santa Maria, CA 93454–5199 (805–925–0994).

(n) Government Information Center, Davidson Library, University of California, Santa Barbara, Santa Barbara, CA 93106–9010 (805–893–8803).

(o) Vandenberg Air Force Base Library, 100 Community Loop, Building 10343A, Vandenberg AFB, CA 93437 (805–606–6414).

(p) Hampton Library, 4207 Victoria Blvd., Hampton, VA 23669 (757–727–1154).

Limited hard copies of the Draft EA are available, on a first request basis, by contacting Mr. Tahu at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: George Tahu, Program Executive at the Science Mission Directorate, NASA Headquarters, telephone 202–358–0723 or via electronic mail at *routine-payload-ea@lists.nasa.gov.*

SUPPLEMENTARY INFORMATION: U.S. space and Earth exploration is integral to NASA's strategic plan for carrying out its mission. NASA is also committed to the further development of advanced, low-cost technologies for exploring and utilizing space. To fulfill these objectives, a continuing series of scientific spacecraft would need to be designed, built, and launched into Earth orbit or towards other bodies in the Solar System. These spacecraft would flyby, encounter, orbit about, land on, or impact with these Solar System bodies to collect various scientific data that would be transmitted to Earth via radio for analysis. The scientific missions associated with NASA routine payloads could not be accomplished without launching such scientific spacecraft.

The proposed action is comprised of preparing and launching missions designated as NASA routine payloads. The design and operational characteristics and, therefore, the potential environmental impacts of routine payloads would be rigorously bounded. NASA routine payloads would utilize materials, launch vehicles, facilities, and operations that are normally and customarily used at all proposed launch sites. The routine payloads would use these materials, launch vehicles, facilities, and operations only within the scope of activities already approved or permitted. The scope of this Draft EA includes all spacecraft that would meet specific criteria on their construction and launch, would accomplish the requirements of NASA's research objectives, and would not present new or substantial environmental impacts or hazards. These spacecraft would meet the limitations set forth in the Routine Payload Checklist, which was developed to delimit the characteristics and environmental impacts of this group of spacecraft. Preparation and launch of all spacecraft that are defined as routine payloads would have potential environmental impacts that fall within the range of routine, ongoing, and previously documented impacts associated with approved missions that have been determined not to be significant. Alternative spacecraft designs that exceed the limitations of the Routine Payload Checklist may have new or substantial environmental impacts or hazards and would be subjected to additional environmental analysis. Foreign launch vehicles would require individual consideration, review, and separate environmental analysis, and were not considered to be reasonable alternatives for the purpose of this NASA routine payload Draft EA. The No-Action Alternative would mean that specific criteria and thresholds presented in the 2002 Final Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from CCAFS Florida and VAFB California would be used to determine a spacecraft's eligibility to be considered a NASA Routine Payload launching on the Pegasus, Taurus, Atlas and Delta families of the vehicles from CCAFS and VAFB. The No-Action alternative would mean that NASA would not launch scientific and technology demonstration spacecraft missions defined as routine payloads on the Falcon and Minotaur families of launch vehicles from any of the launch sites, nor would NASA launch payloads from USAKA, WFF, or KLC, without individual mission NEPA review and documentation.

If the No-Action alternative were selected, NASA would revert to publishing individual NEPA documentation for each mission. Duplicate analyses and redundant documentation for spacecraft missions that meet the limitations of the Routine Payload Checklist, however, would not present any new information or identify any substantially different environmental impacts.

The launch vehicles proposed for launching the routine payload spacecraft represent all presently or soon to be available domestic (U.S.) vehicles that would be suitable for launching the routine payloads, would likely be available, have documented environmental impacts demonstrating NEPA compliance, and would use either existing launch facilities or launch facilities for which environmental impacts have been examined in NEPA documents, or will be in the future. The expendable launch vehicles specifically included in this action include the

following: the Athena I and II, Atlas V family, the Delta family, the Falcon family, the Minotaur family, the Pegasus XL, and Taurus family. These launch vehicles would accommodate the desired range of payload masses, would provide the needed trajectory capabilities, and would provide highly reliable launch services. Individual launch vehicles would be carefully matched to the launch requirements of each particular NASA routine payload.

In the event that other launch vehicles become available after final publication of this Draft EA, they could be NEPA compliant under this Draft EA if they meet the following criteria: (1) NASA has been a cooperating agency with the Department of Defense (DoD) or FAA on the launch vehicle for that given launch site; (2) NASA has published NEPA documentation for that specific launch vehicle at that specific launch site; or (3) NASA formally adopts another agency's NEPA documentation. In addition, launch vehicles covered in this Draft EA could be eligible for launch from commercial spaceports or DoD installations not covered by this document if: (1) NASA is a cooperating agency on the NEPA documents developed by the DoD or FAA for that site; (2) NASA formally adopts those NEPA documents as its own pursuant to CEQ regulations; or (3) NASA completes its own NEPA documentation on a specific launch site.

For the NASA routine payload missions, the potentially affected environment for normal launches includes the areas at and in the vicinity of the proposed launch sites, CCAFS, Florida, VAFB, California, USAKA/RTS, RMI, WFF, Virginia, and KLC, Alaska. Because propellants are typically the largest contributors to potential environmental impacts of a NASA Routine Payload launch, the total propellant load for a payload is considered in this Draft EA. If the payload propellant load exceeds the EPC defined in the Draft EA, then additional NEPA analysis and documentation would be required. For normal launches of NASA routine payloads under the proposed action, the environmental impacts would be associated principally with the exhaust emissions from the launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near each launch complex, particularly if a rain storm occurred. NASA routine payload processing and launch activities would not require any additional permits or mitigation measures beyond those already existing, or in coordination, for launches.

There are no direct or substantial environmental impacts, including cumulative impacts, associated with the proposed action that have not already been covered by NEPA documentation for the existing launch sites, launch vehicles, launch facilities, and payload processing facilities.

Olga M. Dominguez,

Assistant Administrator for Strategic Infrastructure.

[FR Doc. 2011–21419 Filed 8–22–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–077)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the inventions described and claimed in USPN 6,133,036, Preservation of Liquid Biological Samples, NASA Case No. MSC- 22616–2 and USPN 6,716,392, Preservation of Liquid Biological Samples, NASA Case No. MSC- 22616–3 to Quest Diagnostics Incorporated having its principal place of business in Madison, New Jersey. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Intellectual Property Attorney, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–1001; Fax (281) 483–6936. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: August 17, 2011.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2011–21417 Filed 8–22–11; 8:45 am]

BILLING CODE P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Proposed Collection; Comment Request

AGENCY: Office of National Drug Control Policy.

ACTION: 30-Day notice and request for comments. New Information Collection Request: Drug Free Communities Support Program National Evaluation.

SUMMARY: The Office of National Drug Control Policy (ONDCP) intends to submit the following information collection request to the Office of Management and Budget for review and approval under the Paperwork Reduction Act.

DATES: ONDCP encourages and will accept public comments until September 22, 2011.

ADDRESSES: Address all comments in writing within 30 days to Mr. Patrick Fuchs. Facsimile and e-mail are the most reliable means of communication. Mr. Fuchs facsimile number is (202) 395–5167, and his e-mail address is *pfuchs@omb.eop.gov.* Mailing address is 725 17th Street, NW., Washington DC 20503. For further information contact Mr. Fuchs at (202) 395–3897.

Abstract: ONDCP directs the Drug Free Communities (DFC) Program in partnership with the Substance Abuse and Mental Health Services Administration's Center for Substance

Abuse Prevention. The DFC Program has two primary goals: To reduce youth substance abuse, and to support community anti-drug coalitions by establishing, strengthening, and fostering collaboration among public and private agencies.

Under reauthorization legislation (21 U.S.C. 1702), Congress mandated an evaluation of the DFC Program to determine its effectiveness in meeting objectives. In 2009, a contract was awarded to evaluate the DFC Program. This evaluation builds upon the results of an earlier evaluation and makes use of an existing web-based performance system, called the Coalition Online Management and Evaluation Tool (COMET) and the Coalition Classification Tool (CCT), to gather information from DFC grantees. COMET and CCT are being revised to reduce the burden of information collection on grantees, increase the quality of the data, and facilitate the monitoring and tracking of grantee progress. Revisions to the core outcome measures of DFC are also proposed to bring this data collection in line with the National Outcome Measures (NOMS). Proposed changes include the addition of a peer disapproval measure, the removal of the age of first use measure, and a revision to the perception of risk measure for alcohol to focus on binge drinking. Moreover, prescription drug use is proposed to be tracked as a core substance of abuse in this study.

In addition to the information collected from the COMET and CCT system, the new evaluation will include a case study component to document coalition practices. This element of the evaluation will involve interviews with coalition leaders and surveys of coalition partners from a number of agencies. Each year, nine DFC grantees will be evaluated and the information from the case studies will be shared other grantees.

Type of Information Collection: Web-based data collection, surveys and interviews of DFC and Sober Truth on Preventing Underage Drinking (STOP) Act grantees.

Title: Drug Free Communities Support Program National Evaluation.

Frequency: Semi-annually by DFC and Stop Act Program Directors via COMET, and annually for DFC Program Directors and selected coalition members via the CCT. Interviews and electronic surveys of Program Directors and electronic surveys of selected coalition members will be accomplished one time.

Affected Public: DFC and STOP Act grantees.

Estimated Burden: ONDCP expects that the time required to complete each semi-annual report via COMET will be approximately five hours, and each CCT report will take approximately one hour to complete. Face to face interviews will take 1.5–2 hours and surveys will take approximately .25 hours each to complete. The estimated total amount of time required by all respondents over one year, including Program Directors and grantees to complete COMET, CCT, surveys, and interviews, is 9,680 hours.

Goals: ONDCP intends to use the data of the DFC National Evaluation to assess the DFC Program's effectiveness in preventing and reducing youth substance use. Two primary objectives of the evaluation are to: (1) Support an effective grant monitoring mechanism that provides the Federal government with the expertise, system, functions, and products to collect, analyze, and report data collectively, and (2) regularly monitor and measure data in order to demonstrate the progress of the DFC program and its grantees.

Comment Request: ONDCP especially invites comments on: whether the proposed data are proper for the functions of the agency; whether the information will have practical utility; the accuracy of ONDCP's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; ways to enhance the quality, utility, and clarity of the information to be collected; and, ways to ease the burden on proposed respondents, including the use of automated collection techniques or other forms of information technology. Comments will be accepted for thirty days.

Dated: August 18, 2011.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. 2011–21548 Filed 8–22–11; 8:45 am]

BILLING CODE 3180–W1–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 7, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Humanities Initiatives at Historically Black Colleges and Universities, High Hispanic Enrollment, and Tribal Colleges and Universities, submitted to the Division of Education Programs at the June 30, 2011 deadline.

2. *Date:* September 8, 2011.
Time: 9 a.m. to 5 p.m.
Place: Worburn House Conference Centre, 20 Tavistock Square, London, United Kingdom WC1H9HQ.
Program: This meeting will review applications for Digging into Data Challenge in Digging into Data Program, submitted to the Office of Digital Humanities at the June 16, 2011 deadline.

3. *Date:* September 8, 2011.
Time: 9 a.m. to 5 p.m.
Place: Joint Information Systems Committee, London Offices, Brettenham House, 5 Lancaster Place, Conference Room 1, London, United Kingdom WC2E7EN.
Program: This meeting will review applications for Digging into Data Challenge in Digging into Data Program,

submitted to the Office of Digital Humanities at the June 16, 2011 deadline.

4. *Date:* September 8, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Humanities Initiatives at Historically Black Colleges and Universities, High Hispanic Enrollment, and Tribal Colleges and Universities, submitted to the Division of Education Programs at the June 30, 2011 deadline.

5. *Date:* September 8, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Africa and the Middle East in Bridging Cultures through Film Grants Program, submitted to the Division of Public Programs at the June 29, 2011 deadline.

6. *Date:* September 9, 2011.
Time: 9 a.m. to 5 p.m.
Place: Joint Information Systems Committee, London Offices, Brettenham House (South Entrance), 5 Lancaster Place, Conference Room 2, London, United Kingdom WC2E7EN.
Program: This meeting will review applications for Digging into Data Challenge in Digging into Data Program, submitted to the Office of Digital Humanities at the June 16, 2011 deadline.

7. *Date:* September 9, 2011.
Time: 9 a.m. to 5 p.m.
Place: Joint Information Systems Committee, London Offices, Brettenham House, 5 Lancaster Place, Conference Room 1, London, United Kingdom WC2E7EN.
Program: This meeting will review applications for Digging into Data Challenge in Digging into Data Program, submitted to the Office of Digital Humanities at the June 16, 2011 deadline.

8. *Date:* September 9, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Asia in Bridging Cultures through Film Grants Program, submitted to the Division of Public Programs at the June 29, 2011 deadline.

9. *Date:* September 12, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Humanities Initiatives at Historically Black Colleges and Universities, High Hispanic Enrollment, and Tribal Colleges and Universities, submitted to the Division of Education Programs at the June 30, 2011 deadline.

10. *Date:* September 12, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for "Civility and Democracy" or "The Muslim World and the Humanities" in the Bridging Cultures Implementation Grants for Public Programs, submitted to the Office of the Chairman and the Division of Public Programs at the August 2, 2011 deadline.

11. *Date:* September 13, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for the Americas in Bridging Cultures through Film Grants Program, submitted to the Division of Public Programs at the June 29, 2011 deadline.

12. *Date:* September 13, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Humanities Initiatives at Historically Black Colleges and Universities, High Hispanic Enrollment, and Tribal Colleges and Universities, submitted to the Division of Education Programs at the June 30, 2011 deadline.

13. *Date:* September 15, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Europe in Bridging Cultures through Film Grants Program, submitted to the Division of Public Programs at the June 29, 2011 deadline.

14. *Date:* September 26, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Request for Proposals for A Cooperative Agreement with NEH to Support Bridging Cultures at Community Colleges, submitted to the Division of Education Programs at the August 23, 2011 deadline.

15. *Date:* September 27, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Request for Proposals for A Cooperative Agreement with NEH to Support Bridging Cultures at Community Colleges, submitted to the Division of Education Programs at the August 23, 2011 deadline.

16. *Date:* September 27, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for History of Science, Technology, and Medicine in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

17. *Date:* September 29, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for World Studies I (The Americas) in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

Michael P. McDonald,
Advisory Committee Management Officer.

[FR Doc. 2011–21445 Filed 8–22–11; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0181]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 483, Registration Certificate—*In Vitro* Testing with Byproduct Material Under General License.

2. *Current OMB approval number:* 3150–0038.

3. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the NRC within 30 days after the effective date of such change.

4. *Who is required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units

of byproduct material in certain *in vitro* clinical or laboratory tests.

5. *The number of annual respondents:* 87 (7 NRC licensees + 80 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 12.87 hours (1 hour for NRC licensees + 10.7 hours for Agreement State licensees + 1.17 hours recordkeeping).

7. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation there from to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

Submit, by October 24, 2011, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2011–0181. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2011–0181. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Direct questions about the information collection requirements to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 17th day of August, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–21433 Filed 8–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0187]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 28, 2011, to August 10, 2011. The last biweekly notice was published on August 9, 2011 (76 FR 48908).

ADDRESSES: Please include Docket ID NRC–2011–0187 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments 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–2011–0187. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

- *Mail comments to:* 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.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are accessible electronically through ADAMS 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–2011–0187.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is

participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html, by e-mail at MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 13, 2011.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) as a result of a revised Fuel Handling Accident analysis. The new analysis determined that the current TSs may not be conservative for all scenarios. The proposed amendment would provide new applicability and/or action language in the TSs that includes load movements over irradiated fuel assemblies. Specifically, the amendment would modify the following TSs: TS 3.3.3.1 (Radiation Monitoring Instrumentation); TS 3.7.6.1 (Control Room Emergency Air Filtration System); TS 3.7.6.3 (Control Room Air Temperature—Operating); TS 3.7.6.4 (Control Room Air Temperature—Shutdown); TS 3.8.1.2 (A.C.

[Alternating Current] Sources—Shutdown); TS 3.8.2.2 (DC Sources [Direct Current]—Shutdown); TS 3.8.3.2 (On Site Power Distribution—Shutdown); TS 3.9.3 (Decay Time); TS 3.9.4 (Containment Building Penetrations); and TS 3.9.7 (Crane Travel—Fuel Handling Building).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change revises Technical Specifications applicability wording regarding the movement of fuel assemblies in containment and the fuel storage pool to include load movements over irradiated fuel assemblies. The proposed applicability is more comprehensive than the current Applicability. This change was driven by an analysis change and was not due to fuel handling equipment or fuel movement methods. Expanding the applicability of the relevant Technical Specifications is necessary to account for updated fuel drop analyses which demonstrate that the impacted spent fuel assemblies may be damaged.

Consequently, dropping of a non-irradiated fuel assembly, dummy fuel assembly, or other load could result in a Fuel Handling Accident that has radiological consequences. Changing the applicability of the relevant Technical Specifications does not affect the probability of a Fuel Handling Accident. The expanded applicability provides assurance that equipment designed to mitigate a Fuel Handling Accident is capable of performing its specified safety function.

The dose consequences due to failure of two assemblies remain within the Regulatory Guide 1.183 and 10 CFR 50.67 acceptance criteria limits. The Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Main Control Room (MCR) dose results and associated regulatory limits are presented below.

	New analysis	Regulatory guide 1.183 limit	10 CFR 50.67 limit
EAB	4.56 rem TEDE.	<6.3 rem TEDE.	<25 rem TEDE.
LPZ	0.70 rem TEDE.	<6.3 rem TEDE.	<25 rem TEDE.
MCR	0.824 rem TEDE.	<5 rem TEDE.	<5 rem TEDE.

Consequently, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The revised spent fuel handling analyses demonstrate that the impacted fuel assemblies may be damaged as the result of a dropped fuel assembly, dummy assembly, or load. The existing Technical Specifications regarding movement of fuel assemblies are not applicable for movement of non-irradiated fuel assemblies or other loads. A drop of these loads could cause radiological consequences during periods when the equipment required to mitigate those consequences is not required to be OPERABLE in accordance with the existing Technical Specifications.

The proposed changes to the Technical Specifications applicability language regarding the movement of these loads in containment and the fuel storage pool ensure that Limiting Conditions of Operation and appropriate Required Actions for required equipment are in effect during fuel movement. This provides assurance that the Fuel Handling Accident will remain within the initial assumptions of accident analyses.

Consequently, there is no possibility of a new or different kind of accident due to this change.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed Technical Specifications change will not affect protection criterion for plant equipment and will not reduce the margin of safety. By extending the Applicability to the movement of non-irradiated fuel assemblies, the current margin of safety is maintained.

Consequently, there is no significant reduction in a margin of safety due to this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 2, 2011, as supplemented by letter dated August 1, 2011.

Description of amendment request: The proposed amendment would approve revision to the South Texas Project (STP), Units 1 and 2, Fire Protection Program related to the alternate shutdown capability. Specifically, STP Nuclear Operating Company (STPNOC) proposes to credit the following manual operator actions in the control room prior to evacuation due to a fire for meeting the alternate shutdown capability:

- Main steam line isolation.
- Closing the pressurizer power-operated relief valves block valves.
- Securing all reactor coolant pumps.
- Feedwater isolation.
- Securing the startup feedwater pump.
- Letdown isolation.
- Securing the charging pumps.

In addition, STPNOC proposes to credit the automatic trip of the main turbine upon the initiation of a manual reactor trip for meeting the alternate shutdown capability. A thermal-hydraulic analysis will demonstrate that these operations will ensure that the reactor coolant system (RCS) process variables remain within those values predicted for a loss of normal alternating current (a-c) power, as required by Section III.L.1 of Appendix R of Title 10 of the Code of Federal Regulations (10 CFR) part 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design function of structures, systems and component are not impacted by the proposed change. The proposed change involves crediting operations in the control room prior to evacuation in the event of a fire in order to meet safe shutdown performance criteria. The proposed action will not initiate an event. The proposed actions do not increase the probability of occurrence of a fire or any other accident previously evaluated.

The proposed operations are feasible and reliable and demonstrate that the unit can be safely shutdown in the event of a fire. No significant consequences result from the performance of the proposed operations.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The design function of structures, systems and component are not impacted by the proposed amendment. The proposed change involves operations in response to a fire. They do not involve new failure mechanisms

or malfunctions that can initiate a new accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Thermal-hydraulic analysis demonstrates that the proposed operations to be performed in the control room will ensure that the RCS process variables remain within those values predicted for a loss of normal a-c power, as required by 10 CFR 50, Appendix R, Section III.L.1. The analysis demonstrates that a single spurious operation before control of the plant is achieved through the alternative or dedicated shutdown system will not adversely impact the results of the analysis. After control of the plant is achieved by the alternative or dedicated shutdown system, circuits subjected to fire-induced circuit failures are isolated from the control stations such that the safe shutdown operations will not be compromised.

The need to perform the proposed operations can be readily diagnosed and the operations can be performed in rapid succession by control room operators at their normal control station. The actions are straightforward and familiar to the operators. The actions have been verified that they can be performed through demonstration. The operations are backed up outside the control room such that assurance exists they should not be negated by subsequent spurious actuation signals from a postulated fire.

The automatic turbine trip action can reasonably be assumed to occur with the credited manual reactor trip action that is part of the current licensing basis.

Considerable defense-in-depth features exist in Fire Area 1 [control room is part of Fire Area 1] such that it is extremely unlikely that a fire would result in evacuation of the control room.

The proposed operations are feasible and reliable and demonstrate that the unit can be safely shutdown in the event of a fire. The operations ensure that performance goals of Appendix R, Section III.L.2 are met. The achievement of these goals provide adequate margin from challenging any safety limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: June 17, 2011 (TS–SQN–2011–07).

Description of amendment request: The proposed amendment would revise the licensing basis and the Technical Specifications to permit the use of a more robust AREVA Advanced W17 high thermal performance (HTP) fuel at Sequoyah Nuclear Plant (SQN), Units 1 and 2. This new fuel has been selected to address fuel assembly distortion and its resultant fuel handling issues. The proposed AREVA Advanced W17 HTP fuel assembly design consists of standard uranium dioxide fuel pellets with gadolinium oxide burnable poison and M5™ cladding. The new fuel design ensures mechanical compatibility with the existing fuel, reactor core, control rods, steam supply system, and fuel handling system. The transition from the existing fuel (AREVA Mark-BW) to new fuel (AREVA Advanced W17 HTP) is planned to occur over two refueling cycles for each SQN unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The reactor fuel and the analyses associated with it are not accident initiators. The response of the fuel to an accident is analyzed using conservative techniques and the results are compared to approved acceptance criteria. These evaluation results will show that the fuel response to an accident is within approved acceptance criteria for cores loaded with the new AREVA Advanced W17 HTP fuel and cores loaded with both AREVA Advanced W17 HTP and AREVA Mark-BW fuel. Therefore, the change in fuel design does not affect accident or transient initiation or consequences.

The addition of limits on DNBR [departure from nucleate boiling ratio] and maximum local fuel pin centerline temperature to Safety Limit Technical Specification 2.1.1 or the proposed change to the Safety Limit Technical Specification Figure 2.1–1 does not require any physical change to any plant system, structure, or component. Specifying DNBR and maximum local fuel pin centerline temperature and the change to the CSL [core safety limit] lines are consistent with the Standard Review Plan (SRP) for ensuring that the fuel design limits are met. Operations and analysis will continue to be in compliance with Nuclear Regulatory Commission (NRC) regulations. The new CSL limits will ensure DNBR and the peak fuel centerline temperature is maintained for protecting the fuel. The addition of DNBR limits or fuel pin centerline temperature limits, or changes to the CSL lines do not impact the initiation or the mitigation of an accident.

The proposed change Technical Specification Table 2.2–1 and Figure 3.2–1 are revised to present a new loop flow and total core flow design limit based on the new AREVA Advanced W17 HTP fuel and the new steam generators (now installed for SQN Unit 1 and that will be installed concurrently with the introduction of the new Advanced W17 HTP fuel for SQN Unit 2). Core flow is not an accident initiator and does not play a role in accident mitigation.

The core operating limits to be developed using the new methodologies will be established in accordance with the applicable limitations as documented in the appropriate NRC Safety Evaluation reports. The proposed change to add and remove various topical reports cited in Technical Specification 6.9.1.14.a (including adding revision numbers and revision dates to current cited topical reports) enables the use of appropriate methodologies to re-analyze certain events. The proposed methodologies will ensure that the plant continues to meet applicable design criteria and safety analysis acceptance criteria. The proposed change to the list of NRC-approved methodologies listed in Technical Specification 6.9.1.14.a is administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. The proposed change will update the listing of NRC-approved methodologies consistent with the transition to AREVA Advanced W17 HTP fuel. Changes to the calculated core operating limits may only be made using NRC-approved methods, must be consistent with all applicable safety analysis limits and are controlled by the 10 CFR 50.59 process. The list of methodologies in the Technical Specifications does not impact either the initiation of an accident or the mitigation of its consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of AREVA Advanced W17 HTP fuel in the SQN, Units 1 and 2, reactor cores does not adversely affect any fission product barrier, nor does it alter the safety function of safety systems, structures, or components, or their roles in accident prevention or mitigation. The operational characteristics of AREVA Advanced W17 HTP fuel are bounded by the safety analyses. The AREVA Advanced W17 HTP fuel design performs within fuel design limits and does not create the possibility of a new or different type of accident.

The addition of limits on DNBR and maximum local fuel pin centerline

temperature to Safety Limit Technical Specification 2.1.1 or the proposed change to the Safety Limit Technical Specification Figure 2.1–1 does not require any physical change to any plant system, structure, or component. Specifying DNBR and maximum local fuel pin centerline temperature and the change to the CSL lines are consistent with the SRP for ensuring that the fuel design limits are met. Operations and analysis will continue to be in compliance with NRC regulations. The new CSL limits will ensure DNBR and the peak fuel centerline temperature is maintained for protecting the fuel. The addition of DNBR limits or fuel pin centerline temperature limits, or changes to the CSL lines do not affect any accident initiators that would create a new accident.

The proposed change Technical Specification Table 2.2–1 and Figure 3.2–1 are revised to present a new loop flow and total core flow design limit based on the new AREVA Advanced W17 HTP fuel and the new steam generators (now installed for SQN, Unit 1, and that will be installed concurrently with the introduction of the new Advanced W17 HTP fuel for SQN, Unit 2). Core flow is not an accident initiator and does not play a role in accident mitigation and cannot create the possibility of a new or different kind of accident.

The proposed change to the list of topical reports used to determine the core operating limits is administrative in nature and has no impact on any plant configuration or on system performance. It updates the list of NRC-approved topical reports used to develop the core operating limits. There is no change to the parameters within which the plant is normally operated. The possibility of a new or different accident is not created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Use of AREVA Advanced W17 HTP fuel does not adversely affect any fission product barrier, nor does it alter the safety function of safety systems, structures, or components, or their roles in accident prevention or mitigation. The operational characteristics of AREVA Advanced W17 HTP fuel are bounded by the safety analyses. The AREVA Advanced W17 HTP fuel design performs within fuel design limits. The proposed changes do not result in exceeding design basis limits. Therefore, the licensed safety margins are maintained.

The addition of limits on DNBR and maximum local fuel pin centerline temperature to Safety Limit Technical Specification 2.1.1 or the proposed change to the Safety Limit Technical Specification Figure 2.1–1 does not require any physical change to any plant system, structure, or component. Specifying DNBR and maximum local fuel pin centerline temperature and the change to the CSL lines are consistent with the SRP for ensuring that the fuel design limits are met. Operations and analysis will continue to be in compliance with NRC regulations. The new CSL limits will ensure DNBR and the peak fuel centerline temperature is maintained for protecting the fuel. The addition of DNBR limits or fuel pin centerline temperature limits, or changes to the CSL lines do not impact licensed safety margins.

The proposed change Technical Specification Table 2.2–1 and Figure 3.2–1 are revised to present a new loop flow and total core flow design limit based on the new AREVA Advanced W17 HTP fuel and the new steam generators (now installed for SQN Unit 1 and that will be installed concurrently with the introduction of the new Advanced W17 HTP fuel for SQN Unit 2). The proposed changes to core flow are provided to ensure licensed safety margins are maintained.

The proposed change to the list of topical reports in Technical Specification 6.9.1.14.a does not amend the cycle specific parameters presently required by the Technical Specifications. The individual Technical Specifications continue to require operation of the plant within the bounds of the limits specified in the COLR [core operating limits report]. The proposed change to the list of analytical methods referenced in the COLR is administrative in nature and does not impact the margin of safety.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 23, 2011.

Description of amendment request: The proposed amendment would revise the Wolf Creek Generating Station Technical Specifications (TSs) 3.3.7, "Control Room Emergency Ventilation System (CREVS) Actuation Instrumentation," 3.3.8, "Emergency Exhaust System (EES) Actuation Instrumentation," 3.7.10, "Control Room Emergency Ventilation System (CREVS)," 3.7.11, "Control Room Air Conditioning System (CRACS)," 3.7.13, "Emergency Exhaust System (EES)," 3.8.2, "AC [Alternating Current] Sources—Shutdown," 3.8.5, "DC [Direct Current] Sources—Shutdown," 3.8.8, "Inverters—Shutdown," and 3.8.10, "Distribution Systems—Shutdown." Specifically, the proposed amendment would: (1) Delete MODES 5 and 6 from the Limiting Condition for Operation (LCO) Applicability for the CREVS and its actuation instrumentation (TS 3.7.10 and TS 3.3.7, respectively); (2) delete the Required Action from TS 3.7.10 and TS 3.7.11 that requires verifying that the OPERABLE CREVS/CRACS train is capable of being powered by an emergency power source; (3) revise TS 3.7.13 by incorporating a 7-day Completion Time for restoring an inoperable EES train to OPERABLE status during shutdown conditions; (4) adopt NRC-approved Technical Specification Task Force (TSTF) Change Traveler TSTF–36–A, Revision 4, "Addition of LCO 3.0.3 N/A [not applicable] to shutdown electrical power specifications," for TSs 3.3.8, 3.7.13, 3.8.2, 3.8.5, 3.8.8, and 3.8.10; and (5) add a more restrictive change to the LCO Applicability for TSs 3.8.2, 3.8.5, 3.8.8, and 3.8.10 such that these LCOs apply not only during MODES 5 and 6, but also during the movement of irradiated fuel assemblies regardless of the MODE in which the plant is operating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Deleting MODES 5 and 6 from the LCO Applicability of TSs 3.3.7 and 3.7.10 does not significantly increase the consequences of any accident since it has been demonstrated that the radiological consequences to control room occupants from a waste gas decay tank rupture will remain much less than the regulatory limits with no mitigation from the CREVS in MODES 5 and 6. The acceptance criteria for this event will continue to be met.

Incorporation of a 7-day Completion Time for restoring an inoperable EES train during shutdown conditions (*i.e.*, during movement of irradiated fuel assemblies in the fuel building) and the deletion of Required Actions for verifying the availability of an emergency power source when a CREVS/CRACS train is inoperable during the same conditions, are operational provisions that have no impact on the frequency of occurrence of the event for which the EES, CREVS and CRACS are designed to mitigate. These systems have no bearing on the occurrence of a fuel handling accident [(FHA)] as the systems themselves are not associated with any of the potential initiating sequences, mechanisms or occurrences—such as a failure of a lifting device or crane, or an operator error—that could cause an FHA. Since these systems are designed only to respond to an FHA as accident mitigators

after the accident has occurred, and they have no bearing on the occurrence of such an event themselves, the proposed changes to the CREVS, CRACS, and EES Technical Specifications have no impact on the probability of an accident previously evaluated.

With respect to deleting the noted Required Actions in TS 3.7.10 and TS 3.7.11 (for verifying that the OPERABLE CREVS/CRACS train is capable of being powered from an emergency power source when one CREVS/CRACS train is inoperable), such a change does not change the LCO requirement for both CREVS/CRACS trains to be OPERABLE, nor to the LCO requirements of the TS requirements pertaining to electrical power sources/support for shutdown conditions. The change to the Required Actions would thus not be expected to have a significant impact on the availability of the CREVS and CRACS. That is, adequate availability may be still assumed such that these systems would continue to be available to provide their assumed function for limiting the dose consequences of an FHA in accordance with the accident analysis currently described in the [Updated Safety Analysis Report].

With respect to the Completion Time for an inoperable EES train, the consequences of a postulated accident are not affected by equipment Completion Times as long as adequate equipment availability is maintained. The proposed EES Completion Time is based on the Completion Time specified in the Standard Technical Specifications (STS) for which it may be presumed that the specified Completion Time is acceptable and supports adequate EES availability. As noted in the STS Bases, the 7-day Completion Time for restoring an inoperable EES train takes into account the availability of the other train. Since the STS-support Completion Time supports adequate EES availability, it may be assumed that the EES function would be available for mitigation of an FHA, thus limiting offsite dose to within the currently calculated values based on the current accident analysis. On this basis, the consequences of applicable, analyzed accidents (*i.e.,* the FHA) are not increased by the proposed change.

The adoption of TSTF–36–A will not affect the equipment and LCOs needed to mitigate the consequences of a[n] FHA in the fuel building; however, this change will reduce the chances of an unnecessary plant shutdown due to activities in the fuel building that have no bearing on the operation of the rest of the plant and the reactor core inside the containment building.

[redundant paragraph omitted]

The changes to the shutdown electrical specifications will add an additional restriction that is consistent with the objective of being able to mitigate a fuel handling accident during all situations, including a full core offload, in which such an accident could occur.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no design changes. All design, material, and construction standards that were applicable prior to this amendment request will be maintained. There will be no changes to any design or operating limits.

The proposed changes will not adversely affect accident initiators or precursors nor adversely alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not physically alter safety-related systems nor affect the way in which safety related systems perform their functions. The proposed changes do not alter plant design or operation; therefore, these changes will not increase the probability of any accident.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. After a postulated release from a waste gas decay tank rupture no CREVS mitigation is required. The applicable radiological dose criteria will continue to be met.

Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed design changes nor are there any changes in the method by which any safety related plant SSC performs its specified safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. Equipment performance necessary to fulfill safety analysis missions will be unaffected. The proposed changes will not alter any assumptions required to meet the safety analysis acceptance criteria.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor [], nuclear enthalpy rise hot channel factor [], loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met. It has been demonstrated that the CREVS and its actuation instrumentation are not required to mitigate the control room radiological consequences of a waste gas decay tank rupture.

The proposed changes do not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 22, 2011.

Description of amendment request: The proposed amendment would revise the Wolf Creek Generating Station Technical Specification (TS) 5.3, "Unit Staff Qualifications," by making two administrative changes to TS 5.3.1.1. Specifically, these changes will remove the operator license applicants' education and experience eligibility requirements, and correct inadvertent omissions in previous amendments relative to the Licensed Operators' and Senior Operators' qualification requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is an administrative change to reinstate the qualification requirements for Licensed Operators and Senior Licensed Operators that were inadvertently eliminated through the issuance of Amendment No. 150 [issued

November 26, 2002] and Amendment No. 159 [issued January 31, 2005], and to remove an unnecessary reference to a [National Academy for Nuclear Training] NANT guideline. The proposed change does not directly impact accidents previously evaluated. [Wolf Creek Nuclear Operating Company's (WCNOC's)] licensed operator training program is accredited by the NANT and is based on a systems approach to training consistent with the requirements of 10 CFR Part 55. Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR Part 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training.

Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is an administrative change to reinstate the qualification requirements for Licensed Operators and Senior Licensed Operators that were inadvertently eliminated through the issuance of Amendment No. 150 and Amendment No. 159, and to remove an unnecessary reference to a NANT guideline. WCNOC's licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training consistent with the requirements of 10 CFR Part 55. Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR Part 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is an administrative change to reinstate the qualification requirements for Licensed Operators and Senior Licensed Operators that were inadvertently eliminated through the issuance of Amendment No. 150 and Amendment No. 159, and to remove an unnecessary reference to a NANT guideline. As noted previously, WCNOC's licensed operator training program is accredited and is based on a systems approach to training consistent with the requirements of 10 CFR Part 55. Licensed operator qualifications and training can have an indirect impact on the margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR Part 55 rule, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC' Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: July 22, 2010, as supplemented by letter dated April 8, 2011.

Brief description of amendment: The amendment revised an element of the methodology used in evaluating the radiological consequences of design basis steam generator tube rupture (SGTR) accidents. Specifically, the amendment revised the Palo Verde Nuclear Generating Station (PVNGS) Updated Final Safety Analysis Report Section 15.6.6, "Steam Generator Tube Rupture," to reflect a lower iodine spiking factor assumed for the coincident event Generated Iodine Spike (GIS) and the resulting reduction in the radiological consequences for the Limiting SGTRLOPSF [Steam Generator Tube Rupture with Loss of Offsite Power and Single Failure] Event.

Date of issuance: July 28, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1—186; Unit 2—186; Unit 3—186.

Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register:** December 28, 2010 (75 FR 81669).

The supplemental letter dated April 8, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Unit 1 and 2, Brunswick County, North Carolina

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant Citrus County, Florida

Date of application for amendments: July 8, 2010, as supplemented by letters dated September 23 and November 30, 2010; February 28 and April 7, 2011.

Brief description of amendments: The amendments establish a fleet Cyber Security Plan (CSP) in accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 73.54, "Protection of digital computer and communication systems and networks," and in conformance with the model CSP contained in Appendix A of Nuclear Energy Institute (NEI) document NEI 08–09, "Cyber Security Plan for Nuclear Power Reactors," Revision 6, dated April 2010. The licensees' submittals included the fleet CSP for Brunswick Steam Electric Plant, Units 1 and 2, H. B. Robinson Steam Electric Plant, Unit No. 2, Shearon Harris Nuclear Power Plant, Unit 1, and Crystal River Unit 3 Nuclear Generating Plant, the licensees' proposed changes to the facility operating licenses, and a proposed CSP implementation schedule for each facility.

The licensees' submittals dated November 30, 2010, and April 7, 2011, supplemented the licensees' CSP to address: (1) Scope of systems in response to the October 21, 2010, the Nuclear Regulatory Commission (NRC, Commission) decision; (2) records retention; and (3) implementation schedule. The licensee provided, in its letter dated April 7, 2011, a revised copy of the Carolina Power & Light Company and Florida Power Corporation, Cyber Security Plan, Revision 0 that incorporated all of the changes that the licensee had made to the following sections of their CSP: Scope and purpose, defense-in-depth protective strategies, document control and records retention and handling, and deviations from NEI 08–09, Revision 6.

Date of issuance: July 29, 2011.

Effective date: The license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensees on April 7, 2011, and approved by the NRC staff with the license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: Brunswick 1: 258, Brunswick 2: 286, Robinson 2: 226, Shearon Harris 1: 136, and Crystal River 3: 238.

Renewed Facility Operating License Nos. DPR–71, DPR–62, DPR–23, and NPF–63; and Facility Operating License No. DPR–72.: Amendments changed the facility operating licenses.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62595).

The supplements dated September 23 and November 30, 2010; February 28, 2011, and the Updated No Significant Hazards Consideration in Enclosure 5 of the letter dated April 7, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a safety evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: July 27, 2010, as supplemented by letters dated September 29, 2010, November 22, 2010, and March 30, 2011.

Brief description of amendment: The amendment approves the cyber security plan and associated implementation schedule, and revises Paragraph 2.E of Facility Operating License No. NPF–43 for Fermi 2, to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan. The proposed change is consistent with Nuclear Energy Institute (NEI) 08–09, Revision 6, Cyber Security Plan for Nuclear Power Reactors.

Date of issuance: July 28, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 27, 2010, as supplemented by letters dated September 29, 2010, November 22, 2010, and March 30, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 185.

Facility Operating License No. NPF–43: Amendment revised the License.

Date of initial notice in **Federal Register:** December 7, 2010 (75 FR 76043).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2011.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: June 1, 2010, as supplemented by letters dated January 18, 2011, March 14, 2011, and June 27, 2011.

Brief description of amendment: The amendment revised the Kewaunee licensing basis, approving the licensee to operate the load tap changers (LTCs) on two new transformers in the automatic mode. The LTCs are designed to compensate for potential offsite power voltage variations and will provide added assurance that acceptable voltage is maintained for safety-related equipment.

Date of issuance: July 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 209.

Renewed Facility Operating License No. DPR–43: Amendment did not revise the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 2010 (75 FR 48374).

The supplements dated January 18, 2011, March 14, 2011, and June 27, 2011, provided additional information that clarified the application, did not expand the scope of the application, and

did not change the Commission's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: July 21, 2010.

Description of amendment request: The amendment relocates Millstone Power Station, Unit No. 3 (MPS3) Technical Specification (TS) 3/4.7.14, "Area Temperature Monitoring," and the associated Table 3.7–6, "Area Temperature Monitoring," to the MPS3 Technical Requirements Manual.

Date of issuance: July 27, 2011.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 250.

Renewed Facility Operating License No. NPF–49: The amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** March 22, 2011 (76 FR 16007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2011.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 14, 2010.

Brief description of amendments: The amendments revised the Technical Specifications related to the adoption of technical specification task force technical change Traveler 52, Revision 3, to implement option B of Appendix J to Title 10 of the Code of Federal Regulations (10 CFR), part 50.

Date of Issuance: July 28, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 375, 377, and 376.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

Date of initial notice in **Federal Register:** December 14, 2010 (75 FR 77909).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: June 10, 2009, as supplemented by letters dated December 18, 2009, and August 25, 2010.

Brief description of amendments: The amendments change the Technical Specifications (TSs) and authorize changes to the "Updated Final Safety Analysis Report" (UFSAR) to allow the use of CASMO–4/SIMULATE–3 methodology for application to reactor core designs containing low enrichment uranium fuel bearing lumped burnable and/or gadolinia integral absorbers.

Date of Issuance: August 2, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 377, 379, and 378.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the TSs and authorized UFSAR changes.

Date of initial notice in **Federal Register:** March 19, 2010 (75 FR 13314).

The supplements dated December 15, 2009, and August 25, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 2011.

No significant hazards consideration comments received: No.

Duke Power Company, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Power Company, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Duke Power Company, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 28, 2010, as supplemented March 3, 2011.

Brief description of amendments: The amendments approve changes to each station emergency plans to allow changes to the minimum staffing requirement during emergencies.

Date of Issuance: July 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Catawba 1 and 2–265/261.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and emergency plan.

Amendment Nos.: McGuire 1 and 2—263/243

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and emergency plan.

Amendment Nos. Oconee 1, 2 and 3—376/378/377

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and emergency plan.

Date of initial notice in **Federal Register:** September 7, 2010 (75 FR 54393).

The supplement dated March 3, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 22, 2010, as supplemented by letters dated September 23 and November 30, 2010, and February 15 and April 4, 2011.

Brief description of amendment: The amendment approved the cyber security plan (CSP) and associated implementation schedule, and added new Paragraph 2.E to Facility Operating License No. NPF–47 to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan. The proposed change is generally consistent with Nuclear Energy Institute (NEI) 08–09, Revision 6, "Cyber Security Plan for Nuclear Power Reactors."

Date of issuance: July 29, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on

April 4, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 171.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62596).

The supplemental letters dated September 23 and November 30, 2010, and February 15 and April 4, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247, and 50–286, Indian Point Nuclear Generating Unit 1, 2 and 3, (IP1, IP2, and IP3), Westchester County, New York

Date of application for amendment: July 8, 2010, as supplemented by letters dated February 18, April 1, and June 29, 2011.

Brief description of amendment: The licensee's application for the proposed amendments to the Facility Operating Licenses (FOLs) includes: (1) The proposed Cyber Security Plan (CSP), (2) an implementation schedule, and (3) a proposed statement to be added to the existing FOL Physical Protection license conditions requiring Entergy to fully implement and maintain in effect all provisions of the Commission-approved CSP as required by 10 CFR 73.54, "Protection of digital computer and communication systems and networks." A **Federal Register** notice dated March 27, 2009, issued the final rule that amended 10 CFR Part 73. The regulations in 10 CFR 73.54, establish the requirements for a CSP. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under Part 50 of this chapter to submit a CSP that satisfies the requirements of the Rule. Each submittal must include a proposed implementation schedule, and implementation of the licensee's CSP must be consistent with the approved schedule. The background for this application is addressed by the NRC Notice of Availability, **Federal Register** Notice, Final Rule 10 CFR Part 73, Power Reactor Security Requirements, published on March 27, 2009 (74 FR 13926).

Date of issuance: August 2, 2011.

Effective date: These license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 8, 2010, as supplemented by letters dated February 18, April 1, and June 29, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 55 for IP1, 266 for IP2, and 243 for IP3, respectively.

Facility Operating License Nos. DPR–5, DPR–26, and DPR–64: The amendment revised the Licenses.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62596).

The supplements dated February 18, April 1, and June 29, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 2011.

No significant hazards consideration comments received: Yes. The Safety Evaluation dated August 2, 2011, provides the discussion of the comments received from New York State.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: July 26, 2011, supplemented by letters dated September 27, 2010, November 30, 2010, February 15, 2011, and April 4, 2011.

Brief description of amendment: The amendment approves the cyber security plan and associated implementation schedule, and revises Paragraph 2.E of Facility Operating License No. DPR–20 for Palisades Nuclear Plant, to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan. The proposed change is generally consistent with Nuclear Energy Institute (NEI) 08–09, Revision 6, Cyber Security Plan for Nuclear Power Reactors.

Date of issuance: July 27, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 26, 2010, as supplemented by letters dated September 27, 2010, November 30, 2010, February 15, 2011, and April 4, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 243.

Facility Operating License No. DPR–20: Amendment revised the Renewed Facility Operating License.

Date of initial notice in **Federal Register:** December 7, 2010 (75 FR 76044).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2011.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: August 10, 2010, as supplemented by letter dated June 10, 2011.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.9.3, "Reactor Building Penetrations," to allow reactor building flow path(s) providing direct access from the reactor building atmosphere to the outside atmosphere to be unisolated under administrative control, during movement of irradiated fuel assemblies. The proposed change is consistent with Technical Specification Task Force (TSTF) Technical Change Traveler TSTF–312, Revision 1, "Administratively Control Containment Penetrations."

Date of issuance: August 10, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 245.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** October 5, 2010 (75 FR 61526).

The supplemental letter dated June 10, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: March 19, 2010, as supplemented by letters dated June 16, 2010, October 29, 2010, December 3, 2010, January 14, 2011, and March 23, 2011.

Brief description of amendment: The changes implement an extension of the Technical Specification (TS) allowed outage time (AOT) for the Unit 1 and Unit 2 Suppression Pool Cooling (SPC) mode of the Residual Heat Removal (RHR) system, the Residual Heat Removal Service Water (RHRSW) system, the Emergency Service Water (ESW) system, and the A.C. Sources—Operating (Emergency Diesel Generators) from 72 hours to seven (7) days in order to allow for repairs of the RHRSW system piping. The AOT extension would only be allowed once every other calendar year, for each unit, with the opposite unit shutdown, reactor vessel head removed, reactor cavity flooded, and certain other specific compensatory measures, in effect.

Date of issuance: July 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 203 and 165.

Facility Operating License Nos. NPF–39 and NPF–85: These amendments revised the license and the technical specifications.

Date of initial notice in **Federal Register**: May 18, 2010 (75 FR 27828).

The supplements dated June 16, 2010, October 29, 2010, December 3, 2010, January 14, 2011, and March 23, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–352 and No. 50–353, Limerick Generating Station, Unit 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendments: November 23, 2009, as supplemented by letters dated July 23, September 24, November 18, December 21, 2010, March 31, May 19, and July 11, 2011.

Brief description of amendments: The amendments were submitted in accordance with the provisions of Title 10 of the Code of Federal Regulations (10 CFR) 50.4 and 10 CFR 50.90 and requests NRC approval of the Exelon Generation Company, LLC (Exelon) Cyber Security Plan (CSP), provides an Implementation Schedule, and adds a sentence to the existing Physical Protection license condition to require Exelon to fully implement and maintain in effect all provisions of the Commission approved CSP.

Date of issuance: August 10, 2011.

Effective date: These license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on November 23, 2009 as supplemented by letters dated July 23, September 24, November 18, December 21, 2010, March 31, May 19, and July 11, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 168, 168, 175, 175, 194, 238, 231, 203, 190, 204, 166, 280, 281, 283, 249, 244, 275.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–19, DPR–25, NPF–11, NPF–18, NPF–39, NPF–85, DPR–16, DPR–44, DPR–56, DPR–29, DPR–30, DPR–50: The amendments revised the Licenses.

Date of initial notice in **Federal Register**: April 12, 2011 (75 FR 20379).

The July 23, September 24, November 18, December 21, 2010, March 31, May 19, and July 11, 2011, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: July 22, 2010, as supplemented by letters dated September 28, 2010, November 29, 2010, February 3, 2011, and April 6, 2011.

Brief description of amendments: The amendments to the Renewed Facility Operating Licenses (FOL) include: (1) The proposed BVPS–1 and 2 Cyber Security Plan (CSP), (2) an implementation schedule, and (3) a proposed sentence to be added to the existing renewed FOL Physical Protection license condition for BVPS–1 and 2 requiring FirstEnergy Nuclear Operating Company to fully implement and maintain in effect all provisions of the Commission-approved BVPS–1 and 2 CSP as required by Title 10 of the Code of Federal Regulations (10 CFR) 73.54, "Protection of digital computer

and communication systems and networks." A **Federal Register** notice dated March 27, 2009, issued the final rule that amended 10 CFR Part 73. The regulations in 10 CFR 73.54, establish the requirements for a CSP. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under part 50 of this chapter to submit a CSP that satisfies the requirements of the Rule. Each submittal must include a proposed implementation schedule and implementation of the licensee's CSP must be consistent with the approved schedule. The background for this application is addressed by the NRC Notice of Availability, **Federal Register** Notice, Final Rule, 10 CFR Part 73, Power Reactor Security Requirements, published on March 27, 2009 (74 FR 13926).

Date of issuance: July 28, 2011.

Effective date: These license amendments are effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 22, 2010, as supplemented by letters dated September 28, 2010, November 29, 2010, February 3, 2011, and April 6, 2011, and approved by the Nuclear Regulatory Commission (NRC) staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 287 for BVPS–1 and 174 for BVPS–2.

Facility Operating License Nos. DPR–66 and NPF–73: The amendments revised the License.

Date of initial notice in **Federal Register**: October 12, 2010, 75 FR 62599.

The supplements dated September 28, 2010, November 29, 2010, February 3, 2011, and April 6, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Florida Power and Light Company (FPL), Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 28, 2010, as supplemented by letters dated September 27 and November 19, 2010, and April 5 and June 30, 2011.

Brief description of amendments: The amendment includes three parts: The proposed plan, an implementation schedule, and a sentence added to the existing Physical Protection license condition to require FPL to fully implement and maintain in effect all provisions of the Commission approved cyber security plan (CSP) as required by amended Title 10 of the Code of Federal Regulations (10 CFR) part 73. The proposed CSP was submitted in accordance with 10 CFR 73.54, "Protection of digital computer and communication systems and networks."

Date of issuance: July 29, 2011.

Effective date: These license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 28, 2010, as supplemented by letters dated September 27 and November 19, 2010, and April 5 and June 30, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos: Unit 3—245 and Unit 4—241.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the licenses.

Date of initial notice in **Federal Register:** December 7, 2010 (75 FR 76045).

The supplements dated September 27 and November 19, 2010, and April 5 and June 30, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendment: July 19, 2010, as supplemented by letters dated September 28, 2010, November 30, 2010, and April 8, 2011.

Brief description of amendment: The amendments approve the Cyber Security Plan and associated implementation schedule, and revises License Condition 2.D of the Renewed Facility Operating Licenses for Units 1 and 2. The amendments specify that the licensee fully implement and maintain in effect all provisions of the Commission approved CSP as required by 10 CFR 73.54.

Date of issuance: July 28, 2011.

Effective date: These license amendments are effective as of the date of issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 8, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 315 (for Unit 1) and 299 (for Unit 2).

Facility Operating License No. DPR–74: Amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62600).

The supplemental letters contain clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: July 14, 2010, as supplemented by letters dated September 27, 2010, November 17, 2010, April 5, 2011, and June 22, 2011.

Brief description of amendment: The amendment approves the Cyber Security Plan and associated implementation schedule, and revises License Condition

2.C.(5) of the Renewed Facility Operating License. The amendment specifies that the licensee fully implement and maintain in effect all provisions of the Commission approved CSP, as required by 10 CFR 73.54.

Date of issuance: July 29, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 5, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 278.

Renewed Facility Operating License No. DPR–49: The amendment revised the Renewed Facility Operating License.

Date of initial notice in **Federal Register:** November 9, 2010 (75 FR 68836].

The supplemental letters contain clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 27, 2010, as supplemented by letters dated August 30, 2010, and May 3, 2011.

Brief description of amendments: The amendments revise Technical Specification 3.8.3, "Diesel Fuel Oil and Starting Air," to specify an increased minimum diesel fuel oil storage volume and associated surveillance requirement for the Emergency Diesel Generators.

Date of issuance: August 4, 2011.

Effective date: This license amendment is effective as of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: 244 (for Unit 1) and 248 (for Unit 2).

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications and Renewed Facility Operating License.

Date of initial notice in **Federal Register:** November 30, 2010 (75 FR 74096).

The August 30, 2010, and May 3, 2011, supplements did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: July 20, 2010, and supplemented by letters dated September 24, 2010, November 30, 2010, February 21, 2010, April 1, 2011, and May 26, 2011.

Brief description of amendment: The amendment approves the Cyber Security Plan (CSP) and associated implementation schedule, and revises License Condition 2.C.3 of the Renewed Facility Operating License DPR–22 for Monticello Nuclear Generating Plant. The amendment specifies that the licensee fully implement and maintain in effect all provisions of the Commission approved CSP as required by 10 CFR 73.54.

Date of issuance: August 2, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 1, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 166.

Facility Operating License No. DPR–22. Amendment revised the Renewed Facility Operating License.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62604).

The licensee's supplemental letters contained clarifying information, did not change the scope of the original license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendment: July 20, 2010, and supplemented by letters dated September 24, 2010, November 30, 2010, February 21, 2011, April 1, 2011, and May 26, 2011.

Brief description of amendment: The amendments approve the Cyber Security Plan (CSP) and associated implementation schedule, and revise License Condition 2.C.(3) of the Facility Operating Licenses for each unit at Prairie Island Nuclear Generating Plant. The amendments specify that the licensee fully implement and maintain in effect all provisions of the Commission-approved CSP as required by 10 CFR 73.54.

Date of issuance: July 29, 2011.

Effective date: These license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 1, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 202 (for Unit 1) and 189 (for Unit 2).

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Facility Operating Licenses

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62604).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 14, 2010, as supplemented by letters dated September 28, 2010, April 1, 2011, June 6, 2011, and July 6, 2011.

Brief description of amendments: The amendments approve the Cyber Security Plan (CSP) and associated implementation schedule for Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1

and 2. In addition, the amendments revise the existing license condition regarding physical protection in the each of the three facility operating licenses (FOLs) to require the licensee to fully implement and maintain in effect all provisions of the Nuclear Regulatory Commission (NRC)-approved CSP. The amendment was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 73.54, which requires licensees currently licensed to operate a nuclear power plant under 10 CFR part 50 to submit a CSP for NRC review and approval.

Date of issuance: July 28, 2011.

Effective date: The license amendments are effective as of the date of issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee by letter dated June 6, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 189, 300 and 283.

Facility Operating License Nos. NPF–57, DPR–70 and DPR–75: The amendments revised the FOLs.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62606).

The letters dated September 28, 2010, April 1, 2011, June 6, 2011, and July 6, 2011, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: July 22, 2010, as supplemented by letters dated September 29 and November 30, 2010, and March 31 and June 16, 2011.

Brief description of amendments: The amendments approved the cyber security plan (CSP) and associated implementation schedule, and revised Paragraph 2.E of Facility Operating License Nos. NPF–10 and NPF–15, respectively, for San Onofre Nuclear Generating Station, Units 2 and 3, to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan. The proposed change is consistent with Nuclear Energy Institute (NEI) 08–09, Revision 6, "Cyber Security Plan for Nuclear Power Reactors."

Date of issuance: July 28, 2011.

Effective date: These license amendments are effective as of the date of issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on March 31 and June 16, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: Unit 2—225; Unit 3—218.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register:** November 9, 2010 (75 FR 68836).

The supplemental letters dated September 29 and November 30, 2010, and March 31 and June 16, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Joseph M. Farley Nuclear Plant, Units 1 and 2, Docket Nos. 50–348 and 50–364, Houston County, Alabama; Edwin I. Hatch Nuclear Plant, Units 1 and 2, Docket Nos. 50–321 and 50–366, Appling County, Georgia; Vogtle Electric Generating Plant, Units 1 and 2, Docket Nos. 50–424 and 50–425, Burke County, Georgia

Date of amendment request: July 16, 2010, as supplemented March 28 and April 11, 2011.

Brief description of amendment request: The amendments approve the licensee's Cyber Security Plan and Implementation Schedule.

Date of issuance: July 28, 2011.

Effective date: These license amendments are effective as of the date of their issuance. The implementation of the cyber security plan (CSP), including key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee by letter dated April 11, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos: Farley 1 and 2—186/181; Hatch 1 and 2—265/209; Vogtle 1 and 2—162/144.

Facility Operating License (Farley) NPF–2 and NPF–8; (Hatch) DPR–57 and NPF–5; (Vogtle) NPF–68 and NPF–81: The amendments changed the licenses and the technical specifications.

Date of initial notice in **Federal Register:** April 12, 2011 (76 FR 20381)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: November 23, 2009, as supplemented on December 18, 2009; July 23 and October 1, 2010; April 7 and July 15, 2011 (TS–470).

Description of amendment request: On March 27, 2009, the **Federal Register** Notice (74 FR 13926) published the final rule that amended Title 10 of the Code of Federal Regulations (10 CFR) Part 73, "Physical Protection of Plants and Materials." Specifically, the regulations in 10 CFR 73.54 "Protection of Digital Computer and Communication Systems and Networks," establish the requirements for a cyber security program to protect digital computer and communication systems and networks against cyber attacks. The proposed amendment included the proposed Cyber Security Plan, its implementation schedule, and a revised Physical Protection license condition for Browns Ferry Nuclear Plant, Units 1, 2, and 3 to fully implement and maintain in effect all provisions of the Nuclear Regulatory Commission approved Cyber Security Plan as required by 10 CFR 73.54.

Date of issuance: July 29, 2011.

Effective date: This license amendment is effective as of the date of issuance. The implementation of the cyber security plan (CSP), including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on

April 7, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: Unit 1—279, Unit 2—306, and Unit 3—265.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses.

Date of initial notice in **Federal Register:** December 7, 2010 (75 FR 76046).

The above **Federal Register** notice was based on the supplement dated December 18, 2009. The supplements dated July 23 and October 1, 2010; April 7 and July 15, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 23, 2009, as supplemented on December 11 and December 18, 2009; July 23 and October 1, 2010; April 7 and July 15, 2011 (TS 09–06).

Brief description of amendment: On March 27, 2009, the **Federal Register** Notice (74 FR 13926) published the final rule that amended Title 10 of the Code of Federal Regulations (10 CFR) part 73, "Physical Protection of Plants and Materials." Specifically, the regulations in 10 CFR 73.54 "Protection of Digital Computer and Communication Systems and Networks," establish the requirements for a cyber security program to protect digital computer and communication systems and networks against cyber attacks. The proposed amendment included the proposed Cyber Security Plan, its implementation schedule, and a revised physical protection license condition for Sequoyah Nuclear Plant, Units 1 and 2 to fully implement and maintain in effect all provisions of the Nuclear Regulatory Commission approved Cyber Security Plan as required by 10 CFR 73.54.

Date of issuance: July 29, 2011.

Effective date: This license amendment is effective as of the date of issuance. The implementation of the Cyber Security Plan (CSP), including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 7, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: Unit 1—329 and Unit 2—322.

Facility Operating License DPR–77 and DPR–79: Amendments revised the licenses.

Date of initial notice in **Federal Register:** December 7, 2010 (75 FR 76046).

The above **Federal Register** notice was based on the supplement dated December 18, 2009. The supplements dated July 23 and October 1, 2010; April 7 and July 15, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 25, 2009, as supplemented by letters dated April 22, May 14, August 24, September 29, and November 4, 2010, and February 23, 2011.

Brief description of amendment: The amendment revised Technical Specification 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," to provide a 24-hour Completion Time (CT) for restoration of an inoperable Balance of Plant (BOP) ESFAS train and extends the CTs associated with individual instrument channels in the BOP ESFAS train to maintain overall consistency of related TS actions.

Date of issuance: July 28, 2011.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 201.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 2010 (75 FR 27833).

The supplemental letters dated April 22, May 14, August 24, September 29, and November 4, 2010, and February 23, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 5, 2010, as supplemented by letters dated March 23, May 3, and July 25, 2011.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program with the guidance of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." The amendment adopted NRC-approved Technical Specification Task Force (TSTF)-425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b." When implemented, TSTF–425 relocates most periodic frequencies of TS surveillances to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP), and provides requirements for the new program in the Administrative Controls section of the TSs.

Date of issuance: July 29, 2011.

Effective date: As of its date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: 202.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 2011 (76 FR 1649).

The supplemental letters dated March 23, May 3, and July 25, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2011.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: July 12, 2010.

Brief Description of amendments: These amendments revise the Technical Specifications (TSs) to: (1) Correct an error in TS 3.12.E.5, (2) delete duplicative requirements in TS 3.12.E.2 and TS 3.12.E.4, (3) relocate the shutdown margin value in TS 3.12 and the TS 3.12 Basis to the Core Operating Limits Report (COLR), and 4) expand the TS 6.2 list of parameters defined in the COLR.

Date of issuance: July 28, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 275 and 275.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in **Federal Register:** May 17, 2011 (76 FR 28477).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated July 28, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of August 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–21212 Filed 8–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on September 7, 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, September 7, 2011—1:30 p.m. until 5:30 p.m.

The Subcommittee will review Draft Final Regulatory Guide (RG) 1.93, "Availability of Electric Power Sources," Revision 1 and new Draft Final RG 1.218, "Condition Monitoring Techniques for Electric Cables Used in Nuclear Power Plants (NPPs)." 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.Antonesu@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 e-mailed 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 contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 16, 2011.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–21488 Filed 8–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital Instrumentation and Control Systems; Notice of Meeting

The ACRS Subcommittee on Digital Instrumentation and Control Systems (DI&C) will hold a meeting on September 7, 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, September 7, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review Draft Final Standard Review Plan (SRP) BTP 7–19, Revision 6, "Guidance for Evaluation of Diversity on Defense-In-Depth in Digital Computer-Based I&C Systems," and other related activities on diversity defense-in-depth (D3). 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 e-mailed 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 contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 16, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–21492 Filed 8–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 8–10, 2011, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 21, 2010 (75 FR 65038–65039).

Thursday, September 8, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)–The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Near-Term Task Force Report Regarding the Events at the Fukushima Dai-Ichi Site in Japan (Open)–The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Near-Term Task Force report on the events at the Fukushima Dai-Ichi site in Japan.

10:45 a.m.–12:15 p.m.: Technical Basis and Rulemaking Language Associated with Low-Level Waste Disposal and Site-Specific Analysis (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding technical basis and rulemaking language associated with low-level waste disposal and site-specific analysis.

1:15 p.m.–3:15 p.m.: Safety Evaluation Report (SER) Associated with Revision 19 of the AP1000 Design Control Document (DCD) Amendment (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding the SER associated with Revision 19 of the AP1000 DCD amendment. [**Note:** A portion of this session may be closed in order to discuss and protect information designed as proprietary by Westinghouse pursuant to 5 U.S.C. 552b(c)(4).]

3:30 p.m.–5 p.m.: Draft Final Revision 2 to Regulatory Guide (RG) 1.115, "Protection Against Turbine Missiles (Open) The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Final Revision 2 to RG 1.115.

5 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**NOTE:** A portion of this session may be closed in order to discuss and protect information designed as proprietary by Westinghouse pursuant to 5 U.S.C. 552b(c)(4).]

Friday, September 9, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Selected Chapters of the Safety Evaluation Report (SER) with Open Items Associated with the US Advanced Pressurized Water Reactor (US–APWR) Design Certification and the Comanche Peak Combined License Application (COLA) (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Mitsubishi Heavy Industries (MHI), and Luminant Generation Company (Luminant) regarding selected chapters of the SER with Open Items associated with the US–APWR Design Certification and the COLA. [**Note:** A portion of this session may be closed in order to discuss and protect information designed as proprietary by MHI and Luminant pursuant to 5 U.S.C. 552b(c)(4).]

10:45 a.m.–12:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

12:15 p.m.–12:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:30 p.m.–2 p.m.: Draft Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will discuss the draft report on the biennial ACRS review of the NRC Safety Research Program.

2 p.m.–2:30 p.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—The Committee will discuss the panels performing the quality assessment of NRC research projects on NUREG/CR–6969, "Analysis of Experimental Data for High Burnup Power Water Reactors (PWR) Spent Fuel Isotopic Validation—ARIANE and REBUS Programs (UO_2 Fuel)" and NUREG/CR–7027, "Degradation of Light Water Reactor (LWR) Core Internal Materials Due to Neutron Irradiation."

2:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designed as proprietary by Westinghouse, MHI, and Luminant pursuant to 5 U.S.C 552b(c)(4)]

Saturday, September 10, 2011
Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designed as proprietary by Westinghouse, MHI, and Luminant pursuant to 5 U.S.C. 552b(c)(4).]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Ms. Ilka Berrios, Cognizant ACRS Staff (*Telephone:* 301–415–3179, *E-mail: Ilka.Berrios@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, 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 Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), 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.

Dated: August 17, 2011.

Andrew L. Bates,

Advisory Committee Monogement Officer.

[FR Doc. 2011–21493 Filed 8–22–11; 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 September 7, 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, September 7, 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. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or E-mail: *Ilka.Berrios@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 e-mailed 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 contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 16, 2011.

Cayetano Santos,

Chief, Reoctor Sofety Bronch, Advisory Committee on Reactor Sofeguards.

[FR Doc. 2011–21489 Filed 8–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of August 22, 29, September 5, 12, 19, 26, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 22, 2011

There are no meetings scheduled for the week of August 22, 2011.

Week of August 29, 2011—Tentative

Tuesday, August 30, 2011

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

Final Rule: Enhancements to Emergency Preparedness Regulations (10 CFR parts 50 and 10 CFR part 52) (RIN—3150–Al10) (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9 a.m. Information Briefing on Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), Related Activities (Public Meeting) (*Contact:* Aida Rivera-Varona, 301–415–4001)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 5, 2011—Tentative

There are no meetings scheduled for the week of September 5, 2011.

Week of September 12, 2011—Tentative

There are no meetings scheduled for the week of September 12, 2011.

Week of September 19, 2011—Tentative

There are no meetings scheduled for the week of September 19, 2011.

Week of September 26, 2011—Tentative

Tuesday, September 27, 2011

9 a.m. Mandatory Hearing—Southern Nuclear Operating Co., et al.; Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4, and Limited Work Authorizations (Public Meeting) (*Contact:* Rochelle Bavol, 301–415–1651)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, *TDD:* 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

August 18, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–21626 Filed 8–19–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. C2011–2; Order No. 808]

Complaint About Postal Services

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: San Francisco, in its municipal capacity, has filed a formal complaint alleging that there deficiencies in the Postal Service's delivery of mail to residents of certain multi-unit buildings, and that the Postal Service is therefore not acting in conformance with statutory requirements. This document identifies the grounds for the complaint, reviews key developments, and addresses certain procedural matters, including authorization of settlement negotiations.

DATES: The settlement coordinator's report is due September 15, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in 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:

I. Introduction

A. Procedural Context

The instant Complaint was filed with the Commission on May 18, 2011.[1] It involves two statutory claims about the mode of delivery the Postal Service provides to residents of single-room occupancy buildings (SROs) in San Francisco, California.

The impetus for the Complaint stems from three developments that span more than 5 years. The first was a growing concern, on the part of the City and County of San Francisco (San Francisco or Complainant) about the reliability and security of mail delivery to residents of SROs. Delivery to SROs generally occurs under Postal Service regulations specifying the "single-point" mode of delivery for hotels, schools and similar places. This means a letter carrier typically leaves a mail bag at or in the building, such as at the doorstep, in the lobby or at a central desk.[2] Building management is responsible for delivering the mail to residents and for handling other tasks, such as forwarding. This contrasts with centralized delivery, where a letter carrier delivers mail pursuant to a regulation covering the residents of a multi-unit building, such as an apartment building, via individual, locked mailboxes.[3]

2006 ordinance. The second development was San Francisco's adoption, in 2006, of an ordinance aimed at addressing its concerns about SRO mail delivery. Complaint at 2. The ordinance required SRO owners to install (by the end of 2007) individual, secure, Postal Service-compliant mailboxes for each resident. San Francisco asserts that prior to adoption of the ordinance, there was at least one conversation with a Postal Service employee indicating that installation of Postal Service-approved mailbox installations in SROs would result in a

[1] Complaint of the City and County of San Francisco, May 18, 2011 (Complaint).

[2] *See* POM § 615.2 (single-point delivery).

[3] *See* POM § 631.45 (centralized delivery).

switch from single-point delivery to centralized delivery.

Following adoption of the ordinance, some SRO owners installed individual mailboxes and the Postal Service apparently began delivering mail to residents of these SROs via centralized delivery. However, this practice was later reviewed (as part of a broader evaluation) and found to be contrary to the postal regulation that establishes single-point delivery as the appropriate mode of delivery for SROs. The Postal Service informed a city official that it would continue to deliver mail via centralized delivery to SROs where individual mailboxes had been installed, but would use single-point delivery for all others, including those that installed individual mailboxes in the future. *See id.* Exh. 1 at 1–2.

Federal lawsuit. The third development was San Francisco's filing of a Federal lawsuit in 2009. The grounds, in brief, were that the Postal Service's post-ordinance actions raise constitutional questions and regulatory (title 39) issues.[4] The court dismissed the regulatory issues (finding them within the Commission's purview), but retained jurisdiction over the constitutional claims. At this point, the record shows that the Federal lawsuit is still pending. A lengthy discovery phase is nearing an end; dispositive motions are to be heard by October 13, 2011; and a trial date has been set for January 9, 2012. *See* Answer of the United States Postal Service, August 8, 2011, Exh. 1 (Answer).

B. The Commission's Section 3662 Jurisdiction

Commission jurisdiction over formal complaints is set out in section 3662(a). This section provides:

> Any interested person * * * who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission * * *.

39 U.S.C. 3662(a).

San Francisco generally claims that there are deficiencies in the Postal Service's delivery of mail to most SRO residents in California, and that these deficiencies cause harm to the affected residents and to San Francisco. Complaint at 1. For purposes of establishing Commission jurisdiction, it relies on two of the provisions identified in section 3662: sections 401(2) and 403(c). Section 401(2) grants the Postal Service, as one of its general powers, the authority to adopt, amend, and repeal any rules and regulations necessary to the execution of its statutory functions, to the extent such rules and regulations are not inconsistent with title 39. 39 U.S.C. 401(2). Section 403(c) states that in providing services under title 39 "the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user." 39 U.S.C. 403(c).

C. The Nexus Between Complainant's Assertions and Section 3662 Jurisdiction

The asserted link to section 401(2). San Francisco's reading of postal regulations leads it to conclude that mail delivery to residents of SROs should be provided under centralized delivery regulations, rather than under regulations for single-point delivery, assuming the SRO has individual, locked mailboxes. It maintains that the Postal Service erroneously classifies SROs under the delivery regulation for hotels and schools, and is therefore failing to enforce its own regulations. Complaint at 16.

The asserted link to section 403(c). San Francisco asserts that the Postal Service's decision to use single-point delivery for residents of SROs reflects their socioeconomic status, especially relative to apartment dwellers, and unfounded assumptions about the transience of SRO residents, and therefore unduly discriminates against SRO residents and grants an undue preference to apartment dwellers in violation of 39 U.S.C. 403(c). *Id.* at 12.

II. Postal Service Pleadings

On June 7, 2011, the Postal Service filed a motion seeking dismissal of count 1 of the two-count Complaint.[5] The basis was lack of jurisdiction under section 401(2). The Postal Service did not seek dismissal of count 2, stating instead that the Complainant arguably set out a claim with respect to undue discrimination. *Id.* at 2. The Complainant filed an opposition to the Motion.[6] The Commission granted the Motion, in part, by striking allegations in count 1 that correspondence between the San Francisco Postmaster and a city official had not been adopted pursuant to Federal rulemaking procedures.[7] This disposition led to the filing of the Postal Service's Answer on August 8, 2011.

In its Answer, the Postal Service serially addresses each paragraph, providing responses that admit, deny, disclaim sufficient knowledge to the assertion, or state no response is needed. With respect to points central to the Complaint, it denies that San Francisco has alleged any "deficiencies" in mail delivery service and that "the socioeconomic circumstances of delivery customers matter when making decisions about the appropriate mode of delivery." Answer at 1–2. The Postal Service also denies the applicability of POM 631.45, contending the controlling regulation is POM 615.2, Mail Addressed to Persons at Hotels, Schools, and Similar Places. *Id.* at 4. It adds that San Francisco has not made any showing, as required under POM 631.6 (Conversion of Mode of Delivery) that conversion to another mode of delivery is warranted. *Id.*

Significantly, the Postal Service also states that it "would not object to delivering mail at those locations by placing it into a locked receptacle * * *." *Id.* at 3.

III. Statutory Alternatives for Commission Action

The Commission has two affirmative alternatives for handling a section 3662 complaint under section 3662(b). One is to begin proceedings upon a finding that the complaint raises material issues of fact or law. 39 U.S.C. 3662(b)(1)(A)(i).[8] The other alternative is to issue an order dismissing the complaint. 39 U.S.C. 3662(b)(1)(A)(ii). Action under either alternative is to be taken within 90 days and supported by a written statement setting forth the basis for the determination. 39 U.S.C. 3662(b)(1) and 3662(b)(1)(B).

IV. Analysis and Written Determination

The parties recognize that the Postal Service's current delivery practices do differentiate between residents of many SROs in San Francisco and apartment dwellers. Thus, the current issue before the Commission is whether the pleadings indicate that there are material questions of fact and law on this point.

In its Complaint, San Francisco concludes that in light of the parties' inability to resolve their dispute during mediation associated with the Federal

[4] *City of San Francisco, et al.* v. *United States Postal Service,* N.D. Cal. (1964).

[5] Motion of United States Postal Service for Partial Dismissal of the Complaint, June 7, 2011 (Motion).

[6] City and County of San Francisco's Answer in Opposition to Motion of United States Postal Service for Partial Dismissal of the Complaint, June 15, 2011.

[7] Order Granting, in Part, Postal Service Motion To Dismiss Count 1, July 29, 2011.

[8] The statute does not specify the precise nature of the proceedings.

lawsuit, it believes that additional steps to settle this matter prior to the filing of this Complaint would have been futile. Complaint at 15–16. However, as referenced above, the Postal Service Answer contains what appears to be a good faith offer to address the concerns that initially motivated this controversy by providing a new delivery option for residents of most SROs in San Francisco: delivery of the mail to a locked receptacle, with management continuing to be responsible from that point. The Commission views the Postal Service's offer as an attempt to appropriately balance the concerns of the Complainant (for more security and reliability in mail delivery) and the Postal Service (for efficiency and effectiveness, including the cost implications of adding numerous delivery points at an especially critical financial time).[9]

The Commission therefore defers action on this Complaint and directs that the parties begin settlement negotiations based on the Postal Service's offer. Pursuant to 39 U.S.C. 505, the Commission designates James Waclawski as officer of the Commission (Public Representative) to represent the interests of the public. The Public Representative shall also serve as settlement coordinator. The Commission strongly believes that all concerned would be best served by a negotiated settlement of this matter. It directs the Public Representative to file a report on the progress of settlement within 30 days of the issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. The Commission defers its decision on whether the Complaint of the City and County of San Francisco presents material questions of fact and law, pending settlement discussions between the parties.

2. The Commission directs the Complainant and the Postal Service to immediately engage in settlement negotiations with the goal of expeditiously resolving this controversy based on the Postal Service's offer.

3. The Commission, pursuant to section 505, appoints James Waclawski to serve as Public Representative in this proceeding and to serve as settlement coordinator.

4. The Commission directs the settlement coordinator to file a report within 30 days of the date of this order.

5. The Commission directs the Secretary of the Commission to arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–21415 Filed 8–22–11; 8:45 am]

BILLING CODE 7710–FW–P

[9] San Francisco states that 18,000 San Franciscans live in SROs. *Id.* at 6.

POSTAL REGULATORY COMMISSION

[Docket No. A2011–47; Order No. 805]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Francitas, Texas 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):* August 30, 2011; *deadline for notices to intervene:* September 12, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 15, 2011, the Commission received a petition for review of the Postal Service's determination to close the post office in Francitas, Texas. The petition was filed by Carolina Jalufka (Petitioner) and is postmarked August 6, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–47 to consider Petitioner's appeal. If Petitioner would like to further explain her 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 September 19, 2011.

Categories of issues 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 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 August 30, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is August 30, 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 September 12, 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 August 30, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 30, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher 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

August 15, 2011	Filing of Appeal.
August 30, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 30, 2011	Deadline for the Postal Service to file any responsive pleading.
September 12, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 19, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 10, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
October 25, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 1, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 5, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–21414 Filed 8–22–11; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Notice of Meeting: Partially Closed Meeting of the President's Council of Advisors on Science and Technology

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: September 16, 2011.

ADDRESSES: The meeting will be held at the Marriott Metro Center, 775 12th Street, NW., Ballroom Salon A, Washington, DC.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on September 16, 2011 from 10 a.m. to 5 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide an overview of the National Oceanic Atmospheric Administration environmental observation and prediction activities, and the Department of Veterans Affairs' Million Veteran Program. In addition, several agencies will update PCAST on the implementation status of the recommendations it made in its report on Health Information Technology. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on September 16, 2011, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on September 16, 2011 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12 p.m. Eastern Time on September 8, 2011. Phone or e-mail reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST no later than 12 p.m. Eastern Time on September 1, 2011, so that the comments may be made available to the PCAST members prior to the meeting for their

consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast*. A live video Webcast and an archive of the Webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast*. The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov*, (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast*. PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of MIT and Harvard.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–21422 Filed 8–22–11; 8:45 am]

BILLING CODE 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, August 25, 2011 at 2 p.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)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, 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, August 25, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other 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: August 18, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21583 Filed 8–19–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65147; File No. SR–CBOE–2011–075]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Registration and Qualification Requirements

August 17, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 4, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") proposes to amend its rules regarding registration and qualification of individual Trading Permit Holders and individual associated persons. The text of the proposed rule change is availableon the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary 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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

CBOE is proposing to amend Exchange Rule 3.6A to (i) exempt from registration and qualification individual associated persons that are restricted from accessing the Exchange (physically and electronically) and that do not engage in the securities business of the Trading Permit Holder or TPH organization related to activity that occurs at the Exchange; and (ii) adopt

[1] 15 U.S.C. 78s(b)(1).

language that would eliminate the need to formally file a waiver request for the appropriate category of registration if the individual Trading Permit Holder or individual associated person maintains a registration(s) in designated categories.

Pursuant to Rule 15b7–1,[2] promulgated under the Exchange Act,[3] "No registered broker or dealer shall effect any transaction in * * * any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards * * * established by the rules of any national securities exchange * * *. CBOE Rule 3.6A sets forth the requirements for registration and qualification of individual Trading Permit Holders and individual associated persons. In response to a request by the Division of Trading and Markets of the Securities and Exchange Commission (the "Commission" or "SEC"), CBOE recently amended its rules to expand its registration and qualification requirements set forth in CBOE Rule 3.6A to include individual Trading Permit Holders and individual associated persons that are engaged or to be engaged in the securities business of a Trading Permit Holder or TPH organization.[4] CBOE Rule 3.6A provides that these individuals must be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. Further, Rule 3.6A requires, among other things, that an individual Trading Permit Holder or individual associated person submit an application for registration and pass the appropriate qualification examination before the registration can become effective. The revised requirements apply to both CBOE and CBOE Stock Exchange ("CBSX") Trading Permit Holders and their associated persons.

CBOE Rule 3.6A(a)(2) sets forth the types of individuals that are exempt from registration.[5] CBOE is proposing to amend this provision to also exempt individual associated persons that are restricted from accessing the Exchange (physically and electronically) and that do not engage in the securities business of the Trading Permit Holder or TPH organization related to activity that occurs on the Exchange. CBOE believes that these individuals do not need to be registered with the Exchange because these individuals do not access the Exchange directly and do not engage in the securities business of the Trading Permit Holder relating to activity that occurs on the Exchange. For example, Firm XYZ ("XYZ") is a CBOE TPH organization and a member of NYSE AMEX, LLC ("AMEX"). XYZ employs a market-maker, ABC, who is an associated person of XYZ registered as a market-maker with the AMEX (and subject to the registration and qualification requirements of AMEX). ABC would not be required to separately register with CBOE if ABC (who does not have physical or electronic access to CBOE) submits an order for execution to Broker DEF, a registered broker-dealer and CBOE Trading Permit Holder, who executes the order at CBOE. Broker DEF is subject to the registration requirements of CBOE.

In conjunction with the registration requirements established by SR–CBOE–2010–084, three new qualification examinations became available on June 20, 2011 in the Central Registration Depository system ("WebCRD"), which is operated by the Financial Industry Regulatory Authority, Incorporated ("FINRA"). These registration categories include the following (the required qualification examinations and prerequisites, as applicable, associated with each registration category are in parentheses): PT—Proprietary Trader (Series 56), CT—Proprietary Trader Compliance Officer (Series 14, Series 56 prerequisite) and TP—Proprietary Trader Principal (Series 24, Series 56 prerequisite). CBOE is proposing to adopt language that would eliminate the need to formally file a waiver request for the appropriate category of registration if the individual Trading Permit Holder or individual associated person maintains designated registration categories. Specifically, CBOE is proposing to permit individuals that maintain a Series 7 to satisfy the qualification component associated with registration as a Proprietary Trader. Similarly, CBOE is proposing to accept the Series 24 (including any prerequisite examinations) to satisfy the qualification component associated with registration as a Proprietary Trader Compliance Officer. CBOE is also proposing to allow individual Trading Permit Holders and/or individual associated persons that maintain the Series 9/10 and the Series 23[6] (including any prerequisite examinations) to satisfy the qualification component associated with registration as a Proprietary Trader Principal.

CBOE is proposing to limit the time period for which an automatic waiver of the Series 56 would be granted for those individuals that maintain a Series 7 registration. Any individual seeking an automatic waiver of the Series 56 because they maintain a Series 7 registration must complete all registration requirements in WebCRD for the Proprietary Trader designation no later than December 31, 2011. In addition, CBOE is proposing that because the Series 23 is not available in WebCRD, each applicant must provide documentation of a valid Series 23 license to the Registration Services Department upon request for the Series 24 registration in WebCRD.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(1)[8] of the Act in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3)[9] of the Act, which authorizes CBOE to prescribe standards of training, experience and competence for persons associated with CBOE Trading Permit Holders, in that this filing proposes to amend and clarify the registration and qualification requirements set forth in Exchange Rule 3.6A. CBOE believes the proposed changes are reasonable and set forth the appropriate qualifications for an individual Trading Permit Holder and individual associated person that is required to register under Exchange Rule 3.6A, including, but not limited to, Market-Makers, proprietary traders and individuals effecting transactions on behalf of other broker-dealers.

[2] 17 CFR 240.15b7–1.

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR–CBOE–2010–084).

[5] Even if an individual associated person is exempt from registration with the CBOE under Rule 3.6A, Rule 17.1 provides, in relevant part, "A Trading Permit Holder or a person associated with a Trading Permit Holder * * * shall be subject to the disciplinary jurisdiction of the Exchange."

[6] The Series 23 is designed to test a candidate's knowledge of the rules and statutory provisions applicable to the management of a broker-dealer. It is CBOE's understanding that FINRA permits the Series 23 as an alternative to the Series 24 for its members who are registered as General Securities Sales Supervisors and who are seeking to register and qualify as General Securities Principals. The Series 23 examination covers material from the Series 24 examination not otherwise covered under the Series 9/10 examination.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(c)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] 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
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–075 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–CBOE–2011–075. 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 CBOE. 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–CBOE–2011–075 and should be submitted on or before September 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21465 Filed 8–22–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65094; File No. SR–NASDAQ–2011–115]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for NMS Stocks

August 10, 2011.

Correction

In notice document 2011–20735 appearing on pages 50779–50781 in the issue of August 16, 2011, make the following correction:

On page 50779, in the second column, the File No. in the heading is corrected to read as it appears above.

[FR Doc. C1–2011–20735 Filed 8–22–11; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65158; File No. SR–MSRB–2011–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendments to Rule A–3, on Membership on the Board

August 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of amendments to Rule A–3, on membership on the Board, in order to establish a permanent Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve three year terms. The terms would be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

staggered and, each year, one class would be nominated and elected to the Board of Directors.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change 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 Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make changes to MSRB Rule A–3 as are necessary and appropriate to establish a permanent Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve three year terms. The terms would be staggered and, each year, one class would be nominated and elected to the Board of Directors.

In order to facilitate the transition to three staggered classes, Rule A–3 would include a transitional provision, Rule A–3(h), applicable for the Board's fiscal years commencing October 1, 2012, and ending September 30, 2014, which would provide that Board members who were elected prior to July 2011 and whose terms end on or after September 30, 2012, may be considered for term extensions not exceeding two years, in order to facilitate the transition to three staggered classes of seven Board members per class. The transitional provision would further provide that Board members would be nominated for term extensions by a Special Nominating Committee formed pursuant to Rule A–6, on committees of the Board, and that the Board would then vote on each proposed term extension. The selection of Board members whose terms would be extended would be consistent with ensuring that the Board is in compliance with the composition requirements of revised Section (a) of Rule A–3 during such extension periods.

In an order approving changes to MSRB Rule A–3 to comply with the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") (Pub. L. 111–203, 124 Stat. 1376 (2010)) requiring the Board to have a majority of independent public members and municipal advisor representation,[3] the Commission approved a transitional provision of the rule that increased the Board from 15 to 21 members, 11 of whom would be independent public members and 10 of whom would be members representing regulated entities. Of the public members, at least one would be representative of municipal entities, at least one would be representative of institutional or retail investors, and at least one would be a member of the public with knowledge of or experience in the municipal industry. Of the regulated members, at least one would be representative of broker-dealers, at least one would be representative of bank dealers, and at least one, but not less than 30% of the regulated members, would be representative of municipal advisors that are not associated with broker-dealers or bank dealers.

The Commission also approved a provision in MSRB Rule A–3 that defined an independent public member as one with no material business relationship with an MSRB regulated entity, meaning that, within the last two years, the individual was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual has no relationship with any such entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. The rule further provided that the Board, or by delegation, its Nominating and Governance Committee, could also determine that additional circumstances involving the individual could constitute a material business relationship with an MSRB regulated entity.

In finding that the proposed rule change was reasonable and consistent with the requirements of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78o–4), in that it provided for fair representation of public representatives and MSRB regulated entities, the Commission noted that the MSRB had committed to monitor the effectiveness of the structure of the Board to determine to what extent, if any, proposed changes might be appropriate. Additionally, in its response to comment letters, the MSRB suggested that, at the end of the transitional period, the MSRB would be in a better position to make long-term decisions regarding representation, size and related matters.

While the transitional period has not yet concluded, the Board believes it is now in a position to establish a permanent structure. The MSRB has now operated as an expanded, majority-public Board with representation of municipal advisors, as approved by the Commission, for approximately one fiscal year. During this period, the Board has engaged in the full range of MSRB activities. In a typical year, the Board meets quarterly but this year, due to the requirements of the Dodd-Frank Act and the new rulemaking authority over municipal advisors, the Board met six times in person and numerous times by phone. Additionally, Board members participated in committee meetings and informal conversations. The Board has undertaken many significant rulemaking initiatives regulating the activities of brokers, dealers, municipal securities dealers and municipal advisors that would provide important protections for investors, municipal entities, obligated persons and the public interest. In particular, notwithstanding its larger size, the Board acted swiftly to propose and, in many cases, adopt baseline rules for municipal advisors, and also promulgate additional rules and interpretive guidance applicable to brokers, dealers and municipal securities dealers. The insight of Board members with diverse backgrounds and viewpoints contributed considerably to the quality of the initiatives. In addition, the Board has continued to develop, operate and maintain information systems critical to investors, municipal entities and market professionals. Furthermore, the Board has made significant efforts to orient previously unregulated municipal advisors to the realities of a regulated environment through an unprecedented level of outreach and education activities.

Given the extensive interaction among Board members, the Board was able to evaluate its effectiveness, particularly in the development of a body of rules governing the activities of municipal advisors while maintaining its prior level of regulatory and other activities in connection with brokers, dealers and municipal securities dealers. The Board believes that it has acted effectively as a regulator carrying out the functions contemplated by the Exchange Act and

[3] *See* SEC Release No. 34–63025, File No. SR–MSRB–2010–08 (September 30, 2010).

the Dodd-Frank Act and that its current size and composition have been significant factors in the Board's efficient and effective operation during this transition period. The Board further believes there has been sufficient time to evaluate its effectiveness and has determined to proceed at this time with this proposed rule change to ensure that the federally mandated rule proposal process necessary to obtain SEC approval can be completed in time for the MSRB to undertake its Board member election process in a thorough and orderly manner for the first class of Board members to serve after the conclusion of the transition period.

In order to evaluate the effectiveness of the Board, the Nominating and Governance Committee developed a survey of the members of the Board that addressed various governance issues, such as participation in Board deliberations by individual Board members and constituencies, development of Board agendas, skills and experience of Board members, role of Board committees and staff, and management of Board meetings. The survey inquired as to the ability of industry and public Board members to participate in Board meeting discussions and debate, such as whether the Board considers adequately the interests of municipal advisors in its deliberations, and whether discussions on key issues include a balance of perspectives. The survey results indicated that Board members believe the 21-member Board is working effectively and that the Board, as constituted, can carry out its mission and objectives. Board members also believe that all constituents, industry and public, are appropriately represented by Board members who are able to provide input into the development of Board agendas and participate actively in deliberations.

While the Board proposes a composition greater than the statutory minimum of 15, the Board believes this membership level is appropriate, given the diversity of the municipal securities marketplace and its constituencies, many of whom are required by statute to be represented on the Board. The Exchange Act requires the Board to have at least one retail or institutional investor representative, at least one municipal entity representative, at least one member of the public with knowledge of or experience in the municipal securities industry, at least one broker-dealer representative, at least one bank dealer representative, and at least one municipal advisor representative. Given the diversity of municipal entities, broker-dealers, bank dealers, and municipal advisors, a Board of 21 members provides more flexibility to provide representation from various sectors of the market. For example, at a 21-member level, the Board would be in a position to appoint municipal entity representatives that serve large and small constituencies, such as states and state agencies, cities, and other municipal entities, while at the same time retaining the flexibility to appoint academics and others with a broader view of the market. A smaller Board would be constrained in this regard. Moreover, at a 21-member level, the Board would be similar in size to its counterpart, the Board of Governors of the Financial Industry Regulatory Authority ("FINRA"), the self-regulatory organization that works closely with the Board to enforce Board rules applicable to FINRA members. Consequently, a Board of 21 members is appropriate and consistent with industry norms.

The survey results confirm the individual sentiments of Board members that the Board, as currently constituted, is effective and provides fair representation of public and industry members. Consequently, the Board voted to approve changes to MSRB Rule A–3 to make permanent a Board of 11 independent public members and 10 regulated members, with at least 30% of the regulated members being municipal advisors who are not associated with brokers, dealers or municipal securities dealers ("non-dealer municipal advisors"). The Board further voted to divide itself into three classes of seven, serving staggered three-year terms. Each class would be as evenly divided as possible between public members and regulated members, and there would be at least one non-dealer municipal advisor in each of the three classes. The Board believes this permanent structure is consistent with the Exchange Act and provides fair representation of public members, broker-dealers, bank dealers and municipal advisors.

Finally, the Board voted to permit existing Board members to be considered for extended terms of up to two years, in order to transition to three staggered classes. A transition plan is necessary to balance the classes with public and regulated representatives and to ensure there is at least one non-dealer municipal advisor per class. In order to carry out the transition plan, the Board voted to create, by resolution, a Special Nominating Committee of five disinterested Board members to nominate certain Board members for extended terms. Disinterested Board members are those members who are ineligible for a term extension and, therefore, are less likely to have a personal interest in the nomination process that could affect their independent judgment. The class of 2011 is ineligible and, hence, disinterested because the term extensions would commence as of fiscal year 2013, and these members would no longer be on the Board at that time. Additionally, one public member from the class of 2012 is disinterested because the transition plan does not contemplate an extension for public members from that class. Therefore, there are six disinterested Board members, five of whom comprise the Special Nominating Committee, which includes three public members and two regulated members. The Chair of the Committee was selected from amongst the public members. The Board believes that a Special Nominating Committee of disinterested members, led by a public chair and with a public majority, is in the best position to nominate Board members for term extensions, in that these members are least likely to have personal interests regarding the term extensions that could affect their independent judgments.

The Dodd-Frank Act provides that the Board shall be composed of 15 members or more, provided that such number is an odd number, as specified by the rules of the Board. The Board has voted to increase its membership to 21 and to eliminate Rule A–3(b), which provides that the Board may increase or decrease its membership by multiples of six, in order to maintain an odd number, and that the membership be equally divided among public members, bank dealers, and broker-dealers, so long as the membership is not less than 15. This section is no longer applicable, since the Dodd-Frank Act eliminated the prior statutory requirement that the Board consist of five public members, five bank dealer representatives, and five broker-dealer representatives. Moreover, there is no necessity to specify in a Board rule that the membership may be greater than 15, provided that the membership is set at an odd number, since such a provision is incorporated into the Exchange Act. Future changes in size of the Board, if any, would be effected through the rule change process consistent with the Dodd-Frank Act provisions. Hence, section (b) is no longer necessary.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(B) of the Act, which provides that the MSRB's rules shall:

establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

(i) Shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) Shall specify the length or lengths of terms members shall serve;

(iii) May increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) Shall establish requirements regarding the independence of public representatives.

The MSRB believes the proposed rule change is consistent with the Exchange Act in that the proposal provides that the number of public representatives of the Board shall exceed the total number of regulated representatives by one so that the membership shall be as evenly divided as possible between public representatives and regulated representatives—11 to 10. The proposal specifies the length of term that Board members will serve—three years—which is consistent with the length of the terms served by Board members prior to the adoption of the Dodd-Frank Act. The proposal increases the size of the Board from 15 to 21, consistent with the size of the Board during the transitional period that commenced on October 1, 2010. For the reasons discussed earlier, the Board believes a 21-member Board is effective and fairly represents all constituencies referenced in the Exchange Act, including public representatives and regulated representatives. Finally, the proposed rule change maintains the existing requirement regarding the independence of public representatives.

Section 15B(b)(1) of the Exchange Act further sets forth minimum representation requirements for certain categories of public representatives, as well as for bank dealer, broker-dealer and municipal advisor representatives. The proposed rule change complies with these requirements. The Exchange Act does not, however, mandate the specific number of any class of representative that should serve on the Board, nor does it set forth maximum Board composition or representation requirements. Thus, the MSRB believes that its proposal does provide for fair representation of public representatives, broker-dealers, bank dealers and municipal advisors under the Exchange Act, and it believes that providing a minimum number of non-dealer municipal advisors—at least 30% of the regulated representatives—is reasonable, and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board 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 since it is solely concerned with the administration of the MSRB and, in any event, provides for fair representation on the Board of public representatives, broker dealer representatives, bank dealer representatives and municipal advisor representatives.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2011–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2011–11. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2011–11 and should be submitted on or before September 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21557 Filed 8–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65150; File No. SR–NASDAQ–2011–113]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Clerical Changes to Its Rules

August 17, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[4] 17 CFR 200.30–3(a)(12).

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to make clerical corrections to correct cross-references and a typographical error in Rule 5710 of the NASDAQ rulebook. NASDAQ proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on NASDAQ's Web site at *http://www.nasdaq.cchwallstreet.com*, at NASDAQ's principal office, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to make clerical corrections to update certain cross-references in Rule 5710 and correct a typographic error. NASDAQ inadvertently failed to change these cross-references when the listing rules were relocated from the Rule 4000 Series of the NASDAQ Rulebook to the Rule 5000 Series.[3] This rule filing will correct those cross-references. In addition, this rule filing will correct a typographic error in the Rule. The Exchange is not making any substantive changes to Rule 5710.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal 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 proposed rule change is consistent with these provisions in that it will eliminate confusion about NASDAQ rules by updating inaccurate cross-references to rules that have been renumbered, without changing the substance of the rules.

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.

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

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] NASDAQ has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, NASDAQ believes this proposal should become immediately effective.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–113 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–2011–113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–113 and should be submitted on or before September 13, 2011.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21466 Filed 8–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65149; File No. SR–Phlx–2011–89]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Relating to Alpha Index Options

August 17, 2011.

I. Introduction

On June 23, 2011, NASDAQ OMX PHLX LLC (the "Exchange" or "Phlx") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] a proposed rule change to list and trade options on a number of new Alpha Indexes and to amend Exchange Rule 1001A, Position Limits, with respect to certain Alpha Index options. The proposed rule change was published for comment in the **Federal Register** on July 8, 2011.[2] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

On February 7, 2011, the Commission approved the Exchange's proposed rule change to list and trade options on a number of Alpha Indexes.[3] Alpha Indexes measure relative total returns of one underlying stock or exchange traded fund ("ETF") share against another underlying stock or ETF share underlying options which are also traded on the Exchange (each such combination of two components is referred to as an "Alpha Pair"). The first component identified in an Alpha Pair (the "Target Component") is measured against the second component identified in the Alpha Pair (the "Benchmark Component"). Total return measures performance (rate of return) of price appreciation plus dividends over a given evaluation period.

The Alpha Index options that the Commission has previously approved for listing and trading on the Exchange are limited to specific Alpha Indexes the Target Component of which is a single stock.[4] The Exchange proposes to expand the number of Alpha Indexes on which options can be listed to include certain Alpha Indexes based on the following Alpha Pairs: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY. In these Alpha Indexes, the Target Component as well as the Benchmark Component is an ETF share. The proposed Alpha Index options will enable investors to trade the relative performance of the market sectors represented by the Target Components as compared with the overall market performance represented by the Benchmark Component SPY.

As with each initial Alpha Index option, each proposed new Alpha Index option will meet the criteria set forth in Exchange Rule 1009A(f).[5] Further, following the listing of these Alpha Index options, options on each of the component securities of the Alpha Index must continue to meet the continued listing standards set forth by Exchange Rule 1010, Withdrawal of Approval of Underlying Securities or Options.

Position Limits

The Exchange also proposes to amend section (f) of Exchange Rule 1001A to establish a 15,000 contract position limit in options on Alpha Indexes in which the Target Component is an ETF share. This 15,000 contract position limit would apply not only to the specific Alpha Index options proposed herein, but also to any options the Exchange may list in the future on Alpha Indexes in which the Target Component is an ETF share.[6] For purposes of determining compliance with position limits, positions in Alpha Index options will be aggregated with positions in equity options on the underlying securities. All position limit hedge exemptions will apply.

Clearing

Like the Alpha Index options that are currently trading, the proposed new Alpha Index options are "Strategy Based Options" that will be cleared by the Options Clearing Corporation.

Surveillance

Surveillance for opening price manipulation will be in place for the launch of these new Alpha Index options and other existing surveillance patterns will be utilized to monitor trading in these options. The Exchange represents that these surveillance procedures are adequate to monitor the trading of the new Alpha Index options. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon.

Margin

The Exchange will set customer margin levels for the new Alpha Index options at the higher of the margin required for options on the Target Component or the margin required for options on the Benchmark Component.

Systems Capacity

Additionally, the Exchange affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of these new Alpha Index options. The

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 64788 (July 1, 2011), 76 FR 40415 ("Notice").

[3] See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR–Phlx–2010–176).

[4] The Commission previously approved the listing and trading of options on Alpha Indexes based on the following Alpha Pairs: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. *See supra* note 3. In connection with its proposed rule change to list and trade this initial set of Alpha Index options, the Exchange represented that it would not list Alpha Index options on any other Alpha Pairs without filing a proposed rule change seeking Commission approval. *See id.*

[5] Rule 1009A(f) requires that options on Alpha Indexes meet the following criteria: (1) Alpha Index options will be A.M.-settled. The exercise settlement value will be based upon the opening prices of the individual stock or ETF from the primary listing market on the last trading day prior to expiration (usually a Friday); (2) at the time of listing an Alpha Index option, options on each underlying component of an Alpha Index will also be listed and traded on the Exchange and will meet the requirements of Rule 1009, Criteria for Underlying Securities. Additionally, each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months; (3) following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index will continue to meet the continued listing standards set forth by Phlx Rule 1010, Withdrawal of Approval of Underlying Securities or Options. Additionally, each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,000,000 shares per day in the preceding twelve months; and (4) no Alpha Index option will be listed unless and until options overlying each of the Alpha Index component securities have been listed and traded on a national securities exchange with an average daily options trading volume during the three previous months of at least 10,000 contracts. Following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index must continue to meet this options average daily volume standard.

[6] The Exchange will not, however, list options on any such Alpha Pairs without filing a proposed rule change seeking Commission approval.

Exchange also has been informed that the Options Price Reporting Authority ("OPRA") has the capacity to support such new series.

Customer Protection

Exchange rules designed to protect public customers trading in options would apply to the new Alpha Index options. Phlx Rule 1026 is designed to ensure that options, including Alpha Index options, are sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Phlx Rule 1024, applicable to the conduct of accounts, Phlx Rule 1025 relating to the supervision of accounts, Phlx Rule 1028 relating to confirmations, and Phlx Rule 1029 relating to the delivery of options disclosure documents also apply to trading in Alpha Index options.

Exchange Rules Applicable

All other Exchange rules applicable to Alpha Index options will also apply to the Alpha Index options proposed herein.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As a national securities exchange, Phlx is required, under Section 6(b)(1) of the Act,[9] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade the new Alpha Index options will also be subject to best execution obligations and FINRA rules.[10] Applicable Exchange rules also require that customers receive appropriate disclosure before trading any Alpha Index option.[11] Furthermore, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[12]

Exchange rules applicable to Alpha Index options will also apply to the Alpha Index options proposed herein. As stated in the previous approval for the listing and trading of Alpha Index options, the Commission believes that the listing rules for Alpha Index options are consistent with the Act. Further, the Commission notes that Alpha Index options will be listed only on the specific Alpha Indexes approved by the Commission.[13] The Exchange has represented that it will not list options on any new Alpha Indexes without filing a proposed rule change seeking Commission approval.

The Commission notes that the Exchange has represented that it will have adequate surveillance procedures in place for trading in the new Alpha Index options. Opening price manipulation surveillance will be in place for the launch of the new options on Alpha Indexes and other existing surveillance patterns will be utilized to monitor trading in options on each new Alpha Index. In addition, for surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon. Further, the Commission believes that the Exchange's proposed position and exercise limits for the new Alpha Index options are appropriate and consistent with the Act.

Lastly, the Commission notes that the Exchange has affirmed that it possesses the necessary systems capacity to support any new series that would result from the introduction of the new Alpha Index options.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–2011–89) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21486 Filed 8–22–11; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1).

[10] *See* NASD Rule 2320.

[11] *See* Exchange Rule 1029.

[12] *See* Exchange Rule 1026. *See also* Exchange Rules 1024 and 1025.

[13] The Commission has previously approved the listing and trading of options on the following Alpha Indexes: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. *See supra* note 3. The Commission is now approving the listing and trading of options on the following Alpha Indexes only: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 22, 2011. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: "Personal Financial Statement".

Frequency: On Occasion.

SBA Form Number: 413.

Description of Respondents: Participating Lenders.

Responses: 44,588.

Annual Burden: 66,882.

Title: Quarterly Reports file by Grantees of the Drug Free Workplace Program.

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: Participants for the Drug Free Work Place.

Responses: 28.

Annual Burden: 112.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–21491 Filed 8–22–11; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 7564]

Determination on Bilateral Assistance Relating to the Government of the Russian Federation

Pursuant to the authority vested in me by the laws of the United States, including Section 7074(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B., Pub. L. 112–10) ("the Act"), I hereby determine that waiving the requirements of subsection (a) of Section 7074 of the Act is important to the national interests of the United States, and I hereby so waive.

This Determination shall be published in the **Federal Register** and transmitted to the Congress.

Dated: August 4, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–21537 Filed 8–22–11; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 7548]

Notice of Public Meeting of the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), the PEPFAR Scientific Advisory Board (hereinafter referred to as "the Board") will meet on September 14–15, 2011 at the House of Sweden Event Center, 2900 K Street, NW., Washington, DC 20007. The meeting will last from 9 a.m. until approximately 5 p.m. on the 14th and from 9 a.m. until approximately 3 p.m. on the 15th and is open to the public.

The meeting will be hosted by the Office of the U.S. Global AIDS Coordinator, Ambassador Eric Goosby, who leads implementation of the President's Emergency Plan for AIDS Relief (PEPFAR).

The Board serves the Global AIDS Coordinator in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues will be of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in the international discourse regarding appropriate and resourced responses. Topics for the September 14–15th meeting will include an update on PEPFAR-funded evaluations, discussions on the policy relevance of the recent results regarding treatment for prevention, and recommendations to the Ambassador on the future direction of evaluation and research within PEPFAR.

The public may attend this meeting as seating capacity allows. Admittance to the meeting will be by means of a pre-arranged clearance list. In order to be placed on the list, please register at *https://www.team-psa.com/pepfar/2011*. While the meeting is open to public attendance, the Board will determine procedures for public participation.

For further information about the meeting, please contact Charles Holmes, Chief Medical Officer, Office of the U.S. Global AIDS Coordinator at (202) 663–2440 or *HolmesCB@state.gov*.

Dated: August 15, 2011.

Charles B. Holmes,

Chief Medical Officer, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2011–21532 Filed 8–22–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2011–0022]

On-Line Complaint Form for Service-Related Issues in Air Transportation

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's intention to request an OMB control number for the collection of information from the public using an on-line complaint form. The on-line complaint form allows the public to electronically submit aviation service-related complaints against air carriers.

DATES: Comments on this notice must be received by October 24, 2011.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor Room W–12/140, Washington, DC 20590–0001;
- *Hand delivery:* West Building Ground Floor, Room W–12/140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Blane Workie or Daeleen Chesley, Office of the Secretary, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (voice) or 202–366–7152 (fax) or at *Blane.Workie@dot.gov* or *Daeleen.Chesley@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Submission of Aviation Consumer Protection Division Webpage On-Line Aviation Complaint Form.

OMB Control Number: To Be Determined.

Type of Request: Request for approval of a new information collection.

Abstract: The Department of Transportation's (Department) Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) has broad authority under 49 U.S.C., Subtitle VII, to investigate and enforce consumer protection and civil rights laws and regulations related to air transportation. The Enforcement Office, including its Aviation Consumer Protection Division (ACPD), monitors compliance with and investigates violations of the Department of Transportation's aviation economic, consumer protection, and civil rights requirements.

Among other things, the office is responsible for receiving and investigating service-related consumer complaints filed against air carriers. Once received, the complaints are reviewed by the office to determine the extent to which carriers are in compliance with federal aviation consumer protection and civil rights laws and what, if any, action should be taken.

The key reason for this request is to enable consumers to file their complaints to the Department using an on-line form. If the information collection form is not available, the Department may receive fewer complaints from consumers. The lack of information could inhibit the Departments' ability to improve airline consumer satisfaction, effectively investigate individual complaints against an air carrier, and/or determine patterns and practices that may develop with an air carrier's services in violation of our rules. The information collection also furthers the objectives of 49 U.S.C. 41712, 40101, 40127, 41702, and 41705 to protect consumers from unfair or deceptive practices, to protect the civil rights of air travelers, and to ensure safe and adequate service in air transportation.

Filing a complaint using a web-based form is voluntary and minimizes the burden on the public. Consumers can also choose to file a complaint with the Department by sending a letter using regular mail or by phone message. The type of information requested on the on-line form includes complainant's name, address, daytime phone number (including area code) and e-mail address, name of the airline or company about which she/he is complaining, flight date, flight number, and origin and destination cities of complainant's trip. A consumer may also use the form to give a description of a specific problem or to ask for air-travel related information from the ACPD. The Department has limited its informational request to only that information necessary to meet its program and administrative monitoring and enforcement requirements.

Respondents: Consumers that Choose to File an On-Line Complaint with the Aviation Consumer Protection Division.

Estimated Number of Respondents: 12,899 (based on CY 2010 data).

Estimated Total Burden on Respondents: 3224.75 (hours), 193,485 (minutes). The information collection is available for inspection in regulations.gov, as noted in the **ADDRESSES** section of this document.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record on the docket.

Issued in Washington, DC on August 17, 2011.

Patricia Lawton,

DOT PRA Clearance Officer.

[FR Doc. 2011–21370 Filed 8–22–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2011–0435]

Office of Commercial Space Transportation Notice of Intent To Publish Current and Future Launch, Site, and Reentry Licenses and Permits and Their Orders Online

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) is changing the way the Office of Commercial Space Transportation (AST) makes its permits, licenses, and all accompanying orders (authorizations) available to the public. The FAA intends to post all current and future authorizations online on the AST Web site [1] beginning on October 24, 2011. The FAA will not publish license or permit applications or evaluations. The FAA has determined that posting authorizations online will allow it to more effectively and efficiently inform the public of its commercial space transportation permit and license determinations.

DATES: Please submit any comments on or before September 22, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments identified by Docket No. 2011–0435 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this notice contact Charles P. Brinkman, Licensing Program Lead, Commercial Space Transportation—Licensing and Evaluation Division, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7715; e-mail: *phil.brinkman@faa.gov*. For legal questions concerning this notice contact Laura Montgomery, Senior Attorney for Commercial Space Transportation, AGC–200, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; e-mail: *laura.montgomery@faa.gov*.

SUPPLEMENTARY INFORMATION:

The Secretary of Transportation has the authority to issue commercial space transportation permits and licenses for commercial launch, reentry, and launch and reentry site operations. 51 U.S.C.

[1] The AST website address is *http://faa.gov/go/ast*. The FAA proposes to post launch, reentry and site licenses in the *Commercial Space Data—Active Licenses* section at *http://www.faa.gov/about/office_org/headquarters_offices/ast/launch_data/current_licenses/*. The FAA proposes to post permits in the *Commercial Space Data—Active Permits* section at *http://www.faa.gov/about/office_org/headquarters_offices/ast/launch_data/current_permits/*.

50901(b)(3). A license is required to launch a launch vehicle, reenter a reentry vehicle, or operate a launch or reentry site within the United States or by a U.S. citizen. 51 U.S.C. 50904(a)(1)–(4). The FAA issues permits for the launch of reusable suborbital rockets pursuant to the requirements of 51 U.S.C. 50906. Title 5 U.S.C. 552(a)(2) applies to final authorizations the FAA issues to an applicant, and the FAA should therefore make authorizations "available for public inspection, and copying." 5 U.S.C. 552(a)(2).

In compliance with the Administrative Procedure Act, as well as recent guidance from the White House, the FAA is planning to post all current and future authorizations online in order to increase agency efficiency, effectiveness, and transparency. The FAA receives Freedom of Information Act (FOIA) requests for authorizations, and publishing this information online would save the agency both the time and resources used to process and respond to these FOIA requests. The President's recent memorandum on regulatory compliance encourages agencies to make readily accessible to the public information concerning their regulatory compliance and enforcement activities. Presidential Memoranda—Regulatory Compliance (January 18, 2011); *available at http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-compliance.* Publishing authorizations online furthers the FAA's goal of transparency, openness, and public access by making it easier and faster for the public to obtain information regarding AST licensing and permit activities.

Information contained in authorizations is typically not confidential. Typical information provided in a launch license or permit and any accompanying orders includes the specific types of vehicles the authorization applies to, the launch location, and the amount of liability and government property insurance the FAA requires the authorized entity to maintain. Launch licenses also include the term of the license, the authorized azimuths of the launch vehicle, and any type of payload. In some cases, such as a Pegasus launch or a launch under a permit, the launch license will define when flight begins. Insurance information has historically been published on the FAA website. Information including the launch area and the date and time of the launch is provided in publicly available notices to airmen and mariners.[2]

Information in a site license includes the site location, site activities, type of launch vehicle authorized for the site, and the term of the license.

Information provided in a reentry license includes the term of the license, the term of insurance coverage, and the nominal reentry locations. The insurance information is publicly available, now on the FAA's Web site, and the nominal reentry area locations are publicly available in notices to airmen and mariners.

Notices to airmen and mariners are publicly available documents, but they do not provide the same information contained in a license. A notice to airmen and mariners will contain coordinates for an area to alert airmen and mariners of hazards during a specified time period for safety reasons. For reentry, this area is calculated based on the reentry vehicle's possible impact points. While launch locations are generally well-known because launches occur from established launch pads, reentry locations may be the result of an operator's own calculations and decisions. Notices to airmen that restrict air traffic during a reentry do not provide the nominal reentry points that the FAA currently includes in the operator's license. Therefore, operators may have concerns about reverse engineering using the reentry data provided in licenses. While the FAA will continue to include nominal and contingency reentry points in authorizations, operators will have the opportunity to request that the information be redacted from online publication if they consider it confidential. If an operator makes such a request, the FAA will examine the operator's rationale and make a determination regarding whether or not the information is confidential.

Most licenses and permits do not contain confidential information or data. However, for those occasions where specific license terms or conditions reflect circumstances unique to a particular operator, there are protections available under the statute and regulations. Applicants for a license can protect trade secrets or proprietary commercial or financial data by requesting in writing that the information be treated as confidential at the time it is submitted. 14 CFR 413.9(a). Information or data the applicant wishes to protect must be clearly marked with an identifying legend, or cover sheet containing an identifying legend. 14 CFR 413.9(b).

The FOIA exempts from mandatory disclosure trade secrets and privileged or confidential commercial or financial information. 5 U.S.C. 552(b)(4). Information that "is designated as confidential by the person or head of the executive agency providing the information" or that qualifies for an exemption under FOIA can be disclosed by the Secretary of Transportation, an officer or employee of the United States Government, or a person making a contract with the Secretary under section 50906(b) of this title "if the Secretary decides that the withholding of the information or data is contrary to the public or national interest." 51 U.S.C. 50916; 14 CFR 413.9(d).

In some cases, licenses contain specific terms and conditions tailored for a particular licensee. Even so, terms and conditions typically do not contain confidential information, and the FAA will publish these terms and conditions online. The terms may have a useful effect that others may want to be aware of. In the event that the terms and conditions contain confidential information, the licensee can follow the procedures to protect confidential information described above. The FAA will be providing the public with potentially useful information by making this information more readily available through online publication.

Before implementing this new policy, the FAA requests comment from the public, and is providing a period of 30 days for comment.

Issued in Washington, DC, on August 5, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–21423 Filed 8–22–11; 8:45 am]

BILLING CODE 4910–13–P

[2] Notices to airmen and mariners are publicly available on the FAA Web site for two months after their effective date at: *http://tfr.faa.gov/tfr2/list.html.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Change in Use of Aeronautical Property at Bowling Green—Warren County Regional Airport, Bowling Green, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on request by the Bowling Green—Warren County Airport Board to change a portion of airport property

from aeronautical to non-aeronautical use at the Bowling Green—Warren County Regional Airport, Bowling Green, Kentucky. The request consists approximately of 4.66 acres of fee simple release. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 22, 2011.

ADDRESSES: Documents are available for review at the Bowling Green—Warren County Regional Airport, 1000 Woodhurst Dr., Bowling Green, KY 42103 and the FAA Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rob Barnett, Airport Manager, Bowling Green—Warren County Regional Airport, 1000 Woodhurst Dr., Bowling Green, KY 42103.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Team Lead/Civil Engineer, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Bowling Green—Warren County Regional Airport, 1000 Woodhurst Dr., Bowling Green, KY 42103. Under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On August 11, 2011, the FAA determined that the request to release property at Bowling Green—Warren County Regional Airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than *September 22, 2011.*

The following is a brief overview of the request:

The Bowling Green—Warren County Airport Authority is proposing the release of approximately 4.66 acres located at the northwest corner of Airway Court and Searcy Way and along the west side of Airway Court; and as contained in Parcels 052A–03–021 and 052A–03–037. The property address is listed as 2325 Airway Court, Bowling Green, KY 42103. This release is for the sale of said property to KYCORE, LLC for commercial development.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis, TN, on August 11, 2011.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2011–21426 Filed 8–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Underwater Locating Devices (Acoustic) (Self-Powered)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of the planned revocation of the Technical Standard Order (TSO) authorizations (TSOA) for TSO–C121 and C121a, Underwater Locating Devices (ULD), and request for public comment.

SUMMARY: This notice announces the planned revocation of all Technical Standard Order authorizations (TSOA) issued for the production of Underwater Locating Devices (Acoustic) (Self-Powered) manufactured to the TSO–C121 and TSO–C121a specifications. These actions are necessary because the planned issuance of TSO–C121b, Underwater Locating Devices (Acoustic) (Self-Powered), with a minimum performance standard (MPS) that will increase the minimum operating life of Underwater Locating Devices from 30 days to 90 days.

DATES: Comments must be received on or before November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Borsari, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–4578, fax (202) 385–4651, e-mail to: *gregory.borsari@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the revocation of the TSOAs granted for TSO–C121 and C121a, by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

On May 31, 2009, an Airbus A330–203 operated by Air France as flight number 447 (AF 447), bound for the Charles de Gaulle Airport, Paris, France, crashed into the Atlantic Ocean 2 hours and 10 minutes after taking off from Rio de Janeiro's, Galeão Airport. Search and rescue operations were conducted by the French and Brazilian authorities but the flight data recorder and cockpit voice recorder were not recovered until April 2011 during a fourth search and recovery effort.

The Bureau d'Enquêtes et d'Analyses pour la Sécurité de L'aviation Civile (BEA), which is the authority responsible for the investigation of the AF 447 accident, released a second interim report, dated December 17, 2009. The report includes safety recommendations to the European Aviation Safety Agency (EASA) and the International Civil Aviation Organization (ICAO), one of which is to "extend as rapidly as possible to 90 days the regulatory transmission time for underwater locator beacons installed on flight recorders on airplanes performing public transport flights over maritime areas." The FAA agrees with the BEA's recommendation, and via a letter dated January 28, 2010, requested that SAE International form an industry working group to revise the minimum performance standard (MPS), AS8045, Underwater Locating Devices (Acoustic) (Self-Powered), to increase the minimum operating life of Underwater Locating Devices (Acoustic) (Self-Powered), from 30 days to 90 days. SAE International published AS8045A, dated August 3, 2011. The FAA will revise TSO–C121a to invoke the new SAE standard. When TSO–C121b is published the FAA will withdraw TSO–C121 and TSO–C121a authorizations no later than March 1, 2014. All Underwater Locating Devices (Acoustic) (Self-Powered) equipment manufacturers seeking TSO authorization will need to obtain authorization to manufacture in accordance with TSO–C121b.

Issued in Washington, DC, on August 18, 2011.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2011–21536 Filed 8–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions\ may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before September 22, 2011 to be assured of consideration.

Alcohol and Tabacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0099.

Type of Review: Extension without change of a currently approved collection.

Title: Administrative Remedies—Closing Agreements.

Abstract: This is a written agreement between TTB and regulated taxpayers used to finalize and resolve certain tax-related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts is proven.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005; (202) 453–2165.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–21490 Filed 8–22–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled "Capital Distribution."

DATES: Comments must be received by October 24, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–4700.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–NEW, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills, (202) 874–6055, or Mary H. Gottlieb, (202) 874–4824, OCC Clearance Officers, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting OMB approval of the following information collection, which was previously approved under the Office of Thrift Supervision's OMB Control No. 1550–0059. Title III of The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act) transferred the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the OCC. In addition, Dodd-Frank requires the Board of Governors of the Federal Reserve System (Board) to promulgate regulations governing capital distributions. OTS Control No. 1550–0059 was, therefore, transferred to the FRB under OMB Control No. 7100–0339. This information collection replaces, and is identical to, the collection transferred to the FRB.

Comments are solicited on:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of the OCC;

b. The accuracy of OCC's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in our request for OMB approval. All comments will become a matter of public record.

Title of Collection: Capital Distribution.

OMB Control Number: To be assigned by OMB.

Form Number: 1583.

Description: Under 12 CFR 163.143, the OCC will review the information to determine whether the request of savings associations is in accordance with existing statutory and regulatory criteria. In addition, the information provides the OCC with a mechanism for monitoring capital distributions since these distributions can reduce an association's capital and perhaps places it at risk.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 366.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 657 hours.

Dated: August 17, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2011–21517 Filed 8–22–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Boards

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will serve as members

on IRS' Fiscal Year 2011 Senior Executive Service (SES) Performance Review Boards.

DATES: This notice is effective September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Sharnetta Walton, 1111 Constitution Avenue, NW., Room 2412, Washington, DC 20224, (202) 622–6246.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members to the Internal Revenue Service's SES Performance Review Boards. The names and titles of the executives serving on the boards follow:

Steven T. Miller, Deputy Commissioner for Services and Enforcement;
Elizabeth Tucker, Deputy Commissioner for Operations Support;
David P. Alito, Director, Compliance (W&I);
Peggy A. Bogadi, Deputy Commissioner for Operations (W&I);
Lauren Buschor, Deputy Associate CIO, Enterprise Operations (MITS);
Richard E. Byrd, Commissioner (W&I);
Robin L. Canady, Director, Strategy and Finance (W&I);
Rebecca Chiaramida, Director, Office of Privacy, Information Protection and Data Security;
Robert Choi, Director, Employee Plans (TE/GE);
Robert N. Crawford, Associate CIO, Enterprise Services (MITS);
Michael Danilack, Deputy Commissioner, International (LB&I);
Jonathan M. Davis, Chief of Staff, Office of the Commissioner;
Monica Davy, Executive Director, Office of Equity, Diversity and Inclusion;
Paul D. DeNard, Deputy Commissioner, Operations (LB&I);
Alain Dubois, Director, Research (SB/SE);
James P. Falcone, IRS Human Capital Officer;
Faris R. Fink, Commissioner (SB/SE);
Carl T. Froehlich, Associate CIO, End User and Equipment Services (MITS);
Julieta Garcia, Director, Stakeholder Partnerships, Education and Communications (W&I);
Silvana G. Garza, Associate CIO, Affordable Care Act Program Management Office (MITS) ;
David A. Grant, Chief, Agency-Wide Shared Services;
Joseph H. Grant, Deputy Commissioner, Tax Exempt and Government Entities (TE/GE);
Patricia J. Haynes, Director of Field Operations, Southeast (CI);
Shenita L. Hicks, Director, Examination (SB/SE);
Robert L. Hunt, Director, Collection (SB/SE);
John H. Imhoff, Jr., Director, Specialty Programs (SB/SE);
Robin DelRey Jenkins, Director, Office of Business Modernization (SB/SE);
Rebecca Mack Johnson, Director, Strategy and Finance (SB/SE);
Cecille M. Jones, Deputy Director, Electronic Tax Administration and Refundable Credits (W&I);
Keith Jones, Director, Natural Resources and Construction (LB&I);
Michael D. Julianelle, Director, Enterprise Collection Strategy (SB/SE);
Gregory E. Kane, Deputy Chief Financial Officer;
Frank M. Keith, Jr., Chief, Communications and Liaison;
Pamela J. LaRue, Chief Financial Officer;
Lois G. Lerner, Director, Exempt Organizations (TE/GE);
Heather C. Maloy, Commissioner (LB&I);
Stephen L. Manning, Associate CIO, Enterprise Networks (MITS);
Rosemary D. Marcuss, Director, Research, Analysis and Statistics;
C. Andre Martin, Director of Field Operations, Midstates (CI);
Gretchen R. McCoy, Associate CIO, Modernization Program Management Office (MITS);
James M. McGrane, Deputy CIO for Strategy/Modernization (MITS);
Moises C. Medina, Director, Government Entities (TE/GE);
Terence V. Milholland, Chief Technology Officer;
Katherine M. Miller, Associate CIO, Applications Development (MITS);
Debra L. Nelson, Director, Management Services (MITS);
Nina E. Olson, National Taxpayer Adovcate;
Orland M. Parker, Associate CIO, Strategy and Planning (MITS);
Jodell L. Patterson, Director, Office of Taxpayer Correspondence (W&I);
Ruth Perez, Deputy Commissioner (SB/SE);
Rick A. Raven, Deputy Chief (CI);
Julie Rushin, Deputy CIO for Operations (MITS);
Cheryl M. Sherwood, Director, Campus Compliance Services (SB/SE);
Melissa R. Snell, Deputy National Taxpayer Advocate;
Victor S. O. Song, Chief (CI);
David W. Stender, Associate CIO, Cybersecurity (MITS);
Peter J. Stipek, Director, Customer Accounts Services (W&I);
Keith V. Taylor, Director, Human Resources (SB/SE);
Peter C. Wade, Business Modernization Director (W&I);
Christopher Wagner, Chief, Appeals;
Robert C. Wilkerson, Director, Communications, Liaison and Disclosure (SB/SE).

This document does not meet the Department of the Treasury's criteria for significant regulations.

Dated: August 15, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

[FR Doc. 2011–21411 Filed 8–22–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 163 August 23, 2011

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63
Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2010–0505; FRL–9448–6]

RIN 2060–AP76

Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action announces how the EPA proposes to address the reviews of the new source performance standards for volatile organic compound and sulfur dioxide emissions from natural gas processing plants. We are proposing to add to the source category list any oil and gas operation not covered by the current listing. This action also includes proposed amendments to the existing new source performance standards for volatile organic compounds from natural gas processing plants and proposed standards for operations that are not covered by the existing new source performance standards. In addition, this action proposes how the EPA will address the residual risk and technology review conducted for the oil and natural gas production and natural gas transmission and storage national emission standards for hazardous air pollutants. This action further proposes standards for emission sources within these two source categories that are not currently addressed, as well as amendments to improve aspects of these national emission standards for hazardous air pollutants related to applicability and implementation. Finally, this action addresses provisions in these new source performance standards and national emission standards for hazardous air pollutants related to emissions during periods of startup, shutdown and malfunction.

DATES: Comments must be received on or before October 24, 2011.

Public Hearing. Three public hearings will be held to provide the public an opportunity to provide comments on this proposed rulemaking. One will be held in the Dallas, Texas area, one in Pittsburgh, Pennsylvania, and one in Denver, Colorado, on dates to be announced in a separate document. Each hearing will convene at 10 a.m. local time. For additional information on the public hearings and requesting to speak, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2010–0505, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the Air and Radiation Docket Web site.
- *E-mail: a-and-r-docket@epa.gov.* Include Docket ID Number EPA–HQ–OAR–2010–0505 in the subject line of the message.
- *Facsimile:* (202) 566–9744.
- *Mail:* Attention Docket ID Number EPA–HQ–OAR–2010–0505, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for the EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* United States Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2010–0505. 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 Number EPA–HQ–OAR–2010–0505. 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.* For additional instructions on submitting comments, go to section II.C of the **SUPPLEMENTARY INFORMATION** section of this preamble.

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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460; facsimile number: (919) 685–3200; e-mail address: *moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

ACGIH American Conference of Governmental Industrial Hygienists
ADAF Age-Dependent Adjustment Factors
AEGL Acute Exposure Guideline Levels
AERMOD The air dispersion model used by the HEM–3 model
API American Petroleum Institute
BACT Best Available Control Technology
BID Background Information Document
BPD Barrels Per Day
BSER Best System of Emission Reduction
BTEX Benzene, Ethylbenzene, Toluene and Xylene
CAA Clean Air Act
CalEPA California Environmental Protection Agency
CBI Confidential Business Information
CEM Continuous Emissions Monitoring
CEMS Continuous Emissions Monitoring System
CFR Code of Federal Regulations
CIIT Chemical Industry Institute of Toxicology
CO Carbon Monoxide
CO_2 Carbon Dioxide
CO_2e Carbon Dioxide Equivalent
DOE Department of Energy
ECHO Enforcement and Compliance History Online
e-GGRT Electronic Greenhouse Gas Reporting Tool
EJ Environmental Justice
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
GCG Gas Condensate Glycol
GHG Greenhouse Gas
GOR Gas to Oil Ratio
GWP Global Warming Potential
HAP Hazardous Air Pollutants
HEM–3 Human Exposure Model, version 3
HI Hazard Index
HP Horsepower
HQ Hazard Quotient
H_2S Hydrogen Sulfide
ICR Information Collection Request
IPCC Intergovernmental Panel on Climate Change
IRIS Integrated Risk Information System
km Kilometer
kW Kilowatts
LAER Lowest Achievable Emission Rate
lb Pounds
LDAR Leak Detection and Repair
MACT Maximum Achievable Control Technology
MACT Code Code within the NEI used to identify processes included in a source category
Mcf Thousand Cubic Feet
Mg/yr Megagrams per year
MIR Maximum Individual Risk
MIRR Monitoring, Inspection, Recordkeeping and Reporting
$MMtCO_2e$ Million Metric Tons of Carbon Dioxide Equivalents
NAAQS National Ambient Air Quality Standards
NAC/AEGL National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances
NAICS North American Industry Classification System
NAS National Academy of Sciences
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NEMS National Energy Modeling System
NESHAP National Emissions Standards for Hazardous Air Pollutants
NGL Natural Gas Liquids
NIOSH National Institutes for Occupational Safety and Health
NO_X Oxides of Nitrogen
NRC National Research Council
NSPS New Source Performance Standards
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
PFE Potential for Flash Emissions
PM Particulate Matter
$PM_{2.5}$ Particulate Matter (2.5 microns and less)
POM Polycyclic Organic Matter
PPM Parts Per Million
PPMV Parts Per Million by Volume
PSIG Pounds per square inch gauge
PTE Potential to Emit
QA Quality Assurance
RACT Reasonably Available Control Technology
RBLC RACT/BACT/LAER Clearinghouse
REC Reduced Emissions Completions
REL CalEPA Reference Exposure Level
RFA Regulatory Flexibility Act
RfC Reference Concentration
RfD Reference Dose
RIA Regulatory Impact Analysis
RICE Reciprocating Internal Combustion Engines
RTR Residual Risk and Technology Review
SAB Science Advisory Board
SBREFA Small Business Regulatory Enforcement Fairness Act
SCC Source Classification Codes
SCFH Standard Cubic Feet Per Hour
SCFM Standard Cubic Feet Per Minute
SCM Standard Cubic Meters
SCMD Standard Cubic Meters Per Day
SCOT Shell Claus Offgas Treatment
SIP State Implementation Plan
SISNOSE Significant Economic Impact on a Substantial Number of Small Entities
S/L/T State and Local and Tribal Agencies
SO_2 Sulfur Dioxide
SSM Startup, Shutdown and Malfunction
STEL Short-term Exposure Limit
TLV Threshold Limit Value
TOSHI Target Organ-Specific Hazard Index
TPY Tons per Year
TRIM Total Risk Integrated Modeling System
TRIM.FaTE A spatially explicit, compartmental mass balance model that

describes the movement and transformation of pollutants over time, through a user-defined, bounded system that includes both biotic and abiotic compartments
TSD Technical Support Document
UF Uncertainty Factor
UMRA Unfunded Mandates Reform Act
URE Unit Risk Estimate
VCS Voluntary Consensus Standards
VOC Volatile Organic Compounds
VRU Vapor Recovery Unit

II. General Information

A. Does this action apply to me?

The regulated industrial source categories that are the subject of this proposal are listed in Table 1 of this preamble. These standards and any changes considered in this rulemaking would be directly applicable to sources as a Federal program. Thus, Federal, state, local and tribal government entities are not affected by this proposed action.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Category	NAICS code [1]	Examples of regulated entities
Industry	211111	Crude Petroleum and Natural Gas Extraction.
	211112	Natural Gas Liquid Extraction.
	221210	Natural Gas Distribution.
	486110	Pipeline Distribution of Crude Oil.
	486210	Pipeline Transportation of Natural Gas.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in the regulations. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the EPA's Web site. Following signature by the EPA Administrator, a copy of this proposed action will be posted on the EPA's Web site at the following address: *http://www.epa.gov/airquality/oilandgas.*

Additional information is available on the EPA's Residual Risk and Technology Review (RTR) Web site at *http://www.epa.gov/ttn/atw/rrisk/oarpg.html.* This information includes the most recent version of the rule, source category descriptions, detailed emissions and other data that were used as inputs to the risk assessments.

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

Submitting CBI. Do not submit information containing CBI 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 on 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. If you submit a CD ROM or disk that does not contain CBI, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2010–0505.

D. When will a public hearing occur?

We will hold three public hearings, one in the Dallas, Texas area, one in Pittsburgh, Pennsylvania, and one in Denver, Colorado. If you are interested in attending or speaking at one of the public hearings, contact Ms. Joan Rogers at (919) 541–4487 by September 6, 2011. Details on the public hearings will be provided in a separate notice and we will specify the time and date of the public hearings on *http://www.epa.gov/airquality/oilandgas.* If no one requests to speak at one of the public hearings by September 6, 2011, then that public hearing will be cancelled without further notice.

III. Background Information

A. What are standards of performance and NSPS?

1. What is the statutory authority for standards of performance and NSPS?

Section 111 of the Clean Air Act (CAA) requires the EPA Administrator to list categories of stationary sources, if such sources cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for such source categories. A performance standard reflects the degree of emission limitation achievable through the application of the "best system of emission reduction" (BSER) which the EPA determines has been adequately demonstrated. The EPA may consider certain costs and nonair quality health and environmental impact and energy requirements when establishing performance standards. Whereas CAA section 112 standards are issued for existing and new stationary sources, standards of performance are issued for new and modified stationary sources. These standards are referred to as new source performance standards (NSPS). The EPA has the authority to define the source categories, determine the pollutants for which standards should be developed, identify the facilities within each source category to be covered and set the emission level of the standards.

CAA section 111(b)(1)(B) requires the EPA to "at least every 8 years review and, if appropriate, revise" performance standards unless the "Administrator determines that such review is not appropriate in light of readily available information on the efficacy" of the

standard. When conducting a review of an existing performance standard, the EPA has discretion to revise that standard to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to "reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." In this notice, we refer to this level of control as the BSER. In determining BSER, we typically conduct a technology review that identifies what emission reduction systems exist and how much they reduce air pollution in practice. Next, for each control system identified, we evaluate its costs, secondary air benefits (or disbenefits) resulting from energy requirements and nonair quality impacts such as solid waste generation. Based on our evaluation, we would determine BSER. The resultant standard is usually a numerical emissions limit, expressed as a performance level (*i.e.*, a rate-based standard or percent control), that reflects the BSER. Although such standards are based on the BSER, the EPA may not prescribe a particular technology that must be used to comply with a performance standard, except in instances where the Administrator determines it is not feasible to prescribe or enforce a standard of performance. Typically, sources remain free to elect whatever control measures that they choose to meet the emission limits. Upon promulgation, an NSPS becomes a national standard to which all new, modified or reconstructed sources must comply.

2. What is the regulatory history regarding performance standards for the oil and natural gas sector?

In 1979, the EPA listed crude oil and natural gas production on its priority list of source categories for promulgation of NSPS (44 FR 49222, August 21, 1979). On June 24, 1985 (50 FR 26122), the EPA promulgated an NSPS for the source category that addressed volatile organic compound (VOC) emissions from leaking components at onshore natural gas processing plants (40 CFR part 60, subpart KKK). On October 1, 1985 (50 FR 40158), a second NSPS was promulgated for the source category that regulates sulfur dioxide (SO_2) emissions from natural gas processing plants (40 CFR part 60, subpart LLL). Other than natural gas processing plants, EPA has not previously set NSPS for a variety of oil and natural gas operations.

B. What are NESHAP?

1. What is the statutory authority for NESHAP?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) of the CAA calls for us to promulgate national emission standards for hazardous air pollutants (NESHAP) for those sources. "Major sources" are those that emit or have the potential to emit (PTE) 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements and nonair quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards are to reflect application of measures, processes, methods, systems or techniques, including, but not limited to, measures which, (1) reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications, (2) enclose systems or processes to eliminate emissions, (3) capture or treat pollutants when released from a process, stack, storage or fugitive emissions point, (4) are design, equipment, work practice or operational standards (including requirements for operator training or certification) or (5) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standard may take the form of a design, equipment, work practice or operational standard where the EPA first determines either that, (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant or that any requirement for or use of such a conveyance would be inconsistent with law or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA sections 112(h)(1)–(2).

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3), and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT floors for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any nonair quality health and environmental impacts and energy requirements.

The EPA is then required to review these technology-based standards and to revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, under CAA section 112(d)(6). In conducting this review, the EPA is not obliged to completely recalculate the prior MACT determination. *NRDC* v. *EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008).

The second stage in standard-setting focuses on reducing any remaining "residual" risk according to CAA section 112(f). This provision requires, first, that the EPA prepare a *Report to Congress* discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (*Residual Risk Report to Congress*, EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering the EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine for source categories subject to MACT standards, whether the emissions standards provide an ample margin of safety to protect public health. If the MACT standards for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million," the EPA must promulgate

residual risk standards for the source category (or subcategory), as necessary, to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008). ("If EPA determines that the existing technology-based standards provide an "ample margin of safety," then the Agency is free to readopt those standards during the residual risk rulemaking.") The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety and other relevant factors in doing so.

Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of "ample margin of safety" developed in the *National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP)* (54 FR 38044, September 14, 1989). The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is required to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms "individual most exposed," "acceptable level," and "ample margin of safety" are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves the interpretation set out in the Benzene NESHAP, and the United States Court of Appeals for the District of Columbia Circuit in *NRDC* v. *EPA*, 529 F.3d 1077, concluded that the EPA's interpretation of subsection 112(f)(2) is a reasonable one. See *NRDC* v. *EPA*, 529 F.3d at 1083 (D.C. Cir., "[S]ubsection 112(f)(2)(B) expressly incorporates EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**"). (D.C. Cir. 2008). See also, *A Legislative History of the Clean Air Act Amendments of 1990*, volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by, (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, "The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population." The Agency went on to conclude that "estimated incidence would be weighed along with other health risk information in judging acceptability." As explained more fully in our *Residual Risk Report to Congress*, the EPA does not define "rigid line[s] of acceptability," but considers rather broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an "acceptable" risk is based on a judgment of "what risks are acceptable in the world in which we live" (*Residual Risk Report to Congress*, p. 178, quoting the Vinyl Chloride decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that "EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable." 54 FR 38045. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being "the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." *Id.* We explained that this measure of risk "is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years." *Id.* We acknowledge that maximum individual lifetime cancer risk "does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded." *Id.*

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that "consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk." *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination.

The Agency also explained in the 1989 Benzene NESHAP the following: "In establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50-kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities and co-emission of pollutants." *Id.*

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. As explained in the Benzene NESHAP, "[e]ven though the risks judged "acceptable" by the EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an "ample margin of safety," again includes consideration of all of the health factors, and whether to reduce the risks even further." In the ample margin of safety decision process, the Agency again considers all of the health risks and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level

[1] "Adverse environmental effect" is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas.

of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046.

2. How do we consider the risk results in making decisions?

As discussed in the previous section of this preamble, we apply a two-step process for developing standards to address residual risk. In the first step, the EPA determines if risks are acceptable. This determination "considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)[2] of approximately 1-in-10 thousand [*i.e.*, 100-in-1 million]." 54 FR 38045. In the second step of the process, the EPA sets the standard at a level that provides an ample margin of safety "in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision." *Id.*

In past residual risk determinations, the EPA presented a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum noncancer hazard index (HI); and the maximum acute noncancer hazard. In estimating risks, the EPA considered source categories under review that are located near each other and that affect the same population. The EPA provided estimates of the expected difference in actual emissions from the source category under review and emissions allowed pursuant to the source category MACT standard. The EPA also discussed and considered risk estimation uncertainties. The EPA is providing this same type of information in support of these actions.

The Agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors the EPA might consider in making our determinations and how they might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that: "The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health.'"

For example, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explains "an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors." Similarly, with regard to the ample margin of safety analysis, the Benzene NESHAP states that: "EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category."

3. What is the regulatory history regarding NESHAP for the oil and natural gas sector?

On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be published (*i.e.*, the source category list). Oil and natural gas production facilities were listed as a category of major sources. On February 12, 1998 (63 FR 7155), the EPA amended the source category list to add Natural Gas Transmission and Storage as a major source category.

On June 17, 1999 (64 FR 32610), the EPA promulgated MACT standards for the Oil and Natural Gas Production and Natural Gas Transmission and Storage major source categories. The Oil and Natural Gas Production NESHAP (40 CFR part 63, subpart HH) contains standards for HAP emissions from glycol dehydration process vents, storage vessels and natural gas processing plant equipment leaks. The Natural Gas Transmission and Storage NESHAP (40 CFR part 63, subpart HHH) contains standards for glycol dehydration process vents.

In addition to these NESHAP for major sources, the EPA also promulgated NESHAP for the Oil and Natural Gas Production area source category on January 3, 2007 (72 FR 26). These area source standards, which are based on generally available control technology, are also contained in 40 CFR part 63, subpart HH. This proposed action does not impact these area source standards.

C. What litigation is related to this proposed action?

On January 14, 2009, pursuant to section 304(a)(2) of the CAA, WildEarth Guardians and the San Juan Citizens Alliance filed a Complaint alleging that the EPA failed to meet its obligations under CAA sections 111(b)(1)(B), 112(d)(6) and 112(f)(2) to take actions relative to the review/revision of the NSPS and the NESHAP with respect to the Oil and Natural Gas Production source category. On February 4, 2010, the Court entered a consent decree requiring the EPA to sign by July 28, 2011,[3] proposed standards and/or determinations not to issue standards pursuant to CAA sections 111(b)(1)(B), 112(d)(6) and 112(f)(2) and to take final action by February 28, 2012.

D. What is a sector-based approach?

Sector-based approaches are based on integrated assessments that consider multiple pollutants in a comprehensive and coordinated manner to manage emissions and CAA requirements. One of the many ways we can address sector-based approaches is by reviewing multiple regulatory programs together whenever possible, consistent with all

[2] Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

[3] On April 27, 2011, pursuant to paragraph 10(a) of the Consent Decree, the parties filed with the Court a written stipulation that changes the proposal date from January 31, 2011, to July 28, 2011, and the final action date from November 30, 2011, to February 28, 2012.

applicable legal requirements. This approach essentially expands the technical analyses on costs and benefits of particular technologies, to consider the interactions of rules that regulate sources. The benefit of multi-pollutant and sector-based analyses and approaches includes the ability to identify optimum strategies, considering feasibility, cost impacts and benefits across the different pollutant types while streamlining administrative and compliance complexities and reducing conflicting and redundant requirements, resulting in added certainty and easier implementation of control strategies for the sector under consideration. In order to benefit from a sector-based approach for the oil and gas industry, the EPA analyzed how the NSPS and NESHAP under consideration relate to each other and other regulatory requirements currently under review for oil and gas facilities. In this analysis, we looked at how the different control requirements that result from these requirements interact, including the different regulatory deadlines and control equipment requirements that result, the different reporting and recordkeeping requirements and opportunities for states to account for reductions resulting from this rulemaking in their State Implementation Plans (SIP). The requirements analyzed affect criteria pollutant, HAP and methane emissions from oil and natural gas processes and cover the NSPS and NESHAP reviews. As a result of the sector-based approach, this rulemaking will reduce conflicting and redundant requirements. Also, the sector-based approach facilitated the streamlining of monitoring, recordkeeping and reporting requirements, thus, reducing administrative and compliance complexities associated with complying with multiple regulations. In addition, the sector-based approach promotes a comprehensive control strategy that maximizes the co-control of multiple regulated pollutants while obtaining emission reductions as co-benefits.

IV. Oil and Natural Gas Sector

The oil and natural gas sector includes operations involved in the extraction and production of oil and natural gas, as well as the processing, transmission and distribution of natural gas. Specifically for oil, the sector includes all operations from the well to the point of custody transfer at a petroleum refinery. For natural gas, the sector includes all operations from the well to the customer. The oil and natural gas operations can generally be separated into four segments: (1) Oil and natural gas production, (2) natural gas processing, (3) natural gas transmission and (4) natural gas distribution. Each of these segments is briefly discussed below.

Oil and natural gas production includes both onshore and offshore operations. Production operations include the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, separation or treating of oil and/or natural gas (including condensate). Production components may include, but are not limited to, wells and related casing head, tubing head and "Christmas tree" piping, as well as pumps, compressors, heater treaters, separators, storage vessels, pneumatic devices and dehydrators. Production operations also include the well drilling, completion and workover processes and includes all the portable non-self-propelled apparatus associated with those operations. Production sites include not only the "pads" where the wells are located, but also include stand-alone sites where oil, condensate, produced water and gas from several wells may be separated, stored and treated. The production sector also includes the low pressure, small diameter, gathering pipelines and related components that collect and transport the oil, gas and other materials and wastes from the wells to the refineries or natural gas processing plants. None of the operations upstream of the natural gas processing plant are covered by the existing NSPS. Offshore oil and natural gas production occurs on platform structures that house equipment to extract oil and gas from the ocean or lake floor and that process and/or transfer the oil and gas to storage, transport vessels or onshore. Offshore production can also include secondary platform structures connected to the platform structure, storage tanks associated with the platform structure and floating production and offloading equipment.

There are three basic types of wells: Oil wells, gas wells and associated gas wells. Oil wells can have "associated" natural gas that is separated and processed or the crude oil can be the only product processed. Once the crude oil is separated from the water and other impurities, it is essentially ready to be transported to the refinery via truck, railcar or pipeline. We consider the oil refinery sector separately from the oil and natural gas sector. Therefore, at the point of custody transfer at the refinery, the oil leaves the oil and natural gas sector and enters the petroleum refining sector.

Natural gas is primarily made up of methane. However, whether natural gas is associated gas from oil wells or non-associated gas from gas or condensate wells, it commonly exists in mixtures with other hydrocarbons. These hydrocarbons are often referred to as natural gas liquids (NGL). They are sold separately and have a variety of different uses. The raw natural gas often contains water vapor, hydrogen sulfide (H_2S), carbon dioxide (CO_2), helium, nitrogen and other compounds. Natural gas processing consists of separating certain hydrocarbons and fluids from the natural gas to produced "pipeline quality" dry natural gas. While some of the processing can be accomplished in the production segment, the complete processing of natural gas takes place in the natural gas processing segment. Natural gas processing operations separate and recover NGL or other non-methane gases and liquids from a stream of produced natural gas through components performing one or more of the following processes: Oil and condensate separation, water removal, separation of NGL, sulfur and CO_2 removal, fractionation of natural gas liquid and other processes, such as the capture of CO_2 separated from natural gas streams for delivery outside the facility. Natural gas processing plants are the only operations covered by the existing NSPS.

The pipeline quality natural gas leaves the processing segment and enters the transmission segment. Pipelines in the natural gas transmission segment can be interstate pipelines that carry natural gas across state boundaries or intrastate pipelines, which transport the gas within a single state. While interstate pipelines may be of a larger diameter and operated at a higher pressure, the basic components are the same. To ensure that the natural gas flowing through any pipeline remains pressurized, compression of the gas is required periodically along the pipeline. This is accomplished by compressor stations usually placed between 40 and 100 mile intervals along the pipeline. At a compressor station, the natural gas enters the station, where it is compressed by reciprocating or centrifugal compressors.

In addition to the pipelines and compressor stations, the natural gas transmission segment includes underground storage facilities. Underground natural gas storage includes subsurface storage, which typically consists of depleted gas or oil reservoirs and salt dome caverns used for storing natural gas. One purpose of this storage is for load balancing (equalizing the receipt and delivery of natural gas). At an underground storage site, there are typically other processes,

including compression, dehydration and flow measurement.

The distribution segment is the final step in delivering natural gas to customers. The natural gas enters the distribution segment from delivery points located on interstate and intrastate transmission pipelines to business and household customers. The delivery point where the natural gas leaves the transmission segment and enters the distribution segment is often called the "citygate." Typically, utilities take ownership of the gas at the citygate. Natural gas distribution systems consist of thousands of miles of piping, including mains and service pipelines to the customers. Distribution systems sometimes have compressor stations, although they are considerably smaller than transmission compressor stations. Distribution systems include metering stations, which allow distribution companies to monitor the natural gas in the system. Essentially, these metering stations measure the flow of gas and allow distribution companies to track natural gas as it flows through the system.

Emissions can occur from a variety of processes and points throughout the oil and natural gas sector. Primarily, these emissions are organic compounds such as methane, ethane, VOC and organic HAP. The most common organic HAP are n-hexane and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Hydrogen sulfide (H_2S) and sulfur dioxide (SO_2) are emitted from production and processing operations that handle and treat "sour gas." Sour gas is defined as natural gas with a maximum H_2S content of 0.25 gr/100 scf (4ppmv) along with the presence of CO_2.

In addition, there are significant emissions associated with the reciprocating internal combustion engines and combustion turbines that power compressors throughout the oil and natural gas sector. However, emissions from internal combustion engines and combustion turbines are covered by regulations specific to engines and turbines and, thus, are not addressed in this action.

V. Summary of Proposed Decisions and Actions

Pursuant to CAA sections 111(b), 112(d)(2), 112(d)(6) and 112(f), we are proposing to revise the NSPS and NESHAP relative to oil and gas to include the standards and requirements summarized in this section. More details of the rationale for these proposed standards and requirements are provided in sections VI and VII of this preamble. In addition, as part of these rationale discussions, we solicit public comment and data relevant to several issues. The comments we receive during the public comment period will help inform the rule development process as we work toward promulgating a final action.

A. What are the proposed revisions to the NSPS?

We reviewed the two NSPS that apply to the oil and natural gas industry. Based on our review, we believe that the requirements at 40 CFR part 60, subpart KKK, should be updated to reflect requirements in 40 CFR part 60, subpart VVa for controlling VOC equipment leaks at processing plants. We also believe that the requirements at 40 CFR part 60, subpart LLL, for controlling SO_2 emissions from natural gas processing plants should be strengthened for facilities with the highest sulfur feed rates and the highest H_2S concentrations. For a more detailed discussion, please see section VI.B.1 of this preamble.

In addition, there are significant VOC emissions from oil and natural gas operations that are not covered by the two existing NSPS, including other emissions at processing plants and emissions from upstream production, as well as transmission and storage facilities. In the 1984 notice that listed source categories (including Oil and Natural Gas) for promulgation of NSPS, we noted that there were discrepancies between the source category names on the list and those in the background document, and we clarified our intent to address all sources under an industry heading at the same time. See 44 FR 49222, 49224–49225.[4] We, therefore, believe that the currently listed Oil and Natural Gas source category covers all operations in this industry (*i.e.*, production, processing, transmission, storage and distribution). To the extent there are oil and gas operations not covered by the currently listed Oil and Natural Gas source category, pursuant to CAA section 111(b), we hereby modify the category list to include all operations in the oil and natural gas sector. Section 111(b) of the CAA gives the EPA broad authority and discretion to list and establish NSPS for a category that, in the Administrator's judgment, causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Pursuant to CAA section 111(b), we are modifying the source category list to include any oil and gas operation not covered by the current listing and evaluating emissions from all oil and gas operations at the same time.

We are also proposing standards for several new oil and natural gas affected facilities. The proposed standards would apply to affected facilities that commence construction, reconstruction or modification after August 23, 2011. These standards, which include requirements for VOC, would be contained in a new subpart, 40 CFR part 60, subpart OOOO. Subpart OOOO would incorporate 40 CFR part 60, subpart KKK and 40 CFR part 60, subpart LLL, thereby having in this one subpart, all standards that are applicable to the new and modified affected facilities described above. We also propose to amend the title of subparts KKK and LLL, accordingly, to apply only to affected facilities already subject to those subparts. Those operations would not become subject to subpart OOOO unless they triggered applicability based on new or modified affected facilities under subpart OOOO.

We are proposing operational standards for completions of hydraulically fractured gas wells. Based on our review, we identified two subcategories of fractured gas wells for which well completions are conducted. For non-exploratory and non-delineation wells, the proposed operational standards would require reduced emission completion (REC), commonly referred to as "green completion," in combination with pit-flaring of gas not suitable for entering the gathering line. For exploratory and delineation wells (these wells generally are not in close proximity to a gathering line), we proposed an operational standard that would require pit flaring. Well completions subject to the standards would be limited to gas well completions following hydraulic fracturing operations. These completions include those conducted at newly drilled and fractured wells, as well as completions conducted following refracturing operations at various times over the life of the well. We have determined that a completion associated with refracturing performed at an existing well (*i.e.*, a well existing prior to August 23, 2011) is considered a modification under CAA section 111(a), because physical change occurs to the existing well resulting in emissions increase during the refracturing and completion operation. A detailed discussion of this determination is presented in the Technical Support Document (TSD) in the docket. Therefore, the proposed standards would apply to completions at new gas wells that are fractured or

[4] The Notice further states that "The Administrator may also concurrently develop standards for sources which are not on the priority list." 44 FR at 49225.

refractured along with completions associated with fracturing or refracturing of existing gas wells. The modification determination and resultant applicability of NSPS to the completion operation following fracturing or refracturing of existing gas wells (*i.e.*, wells existing before August 23, 2011 would be limited strictly to the wellhead, well bore, casing and tubing, and any conveyance through which gas is vented to the atmosphere and not be extended beyond the wellhead to other ancillary components that may be at the well site such as existing storage vessels, process vessels, separators, dehydrators or any other components or apparatus.

We are also proposing VOC standards to reduce emissions from gas-driven pneumatic devices. We are proposing that each pneumatic device is an affected facility. Accordingly, the proposed standards would apply to each newly installed pneumatic device (including replacement of an existing device). At gas processing plants, we are proposing a zero emission limit for each individual pneumatic controller. The proposed emission standards would reflect the emission level achievable from the use of non-gas-driven pneumatic controllers. At other locations, we are proposing a bleed limit of 6 standard cubic feet of gas per hour for an individual pneumatic controller, which would reflect the emission level achievable from the use of low bleed gas-driven pneumatic controllers. In both cases, the standards provide exemptions for certain applications based on functional considerations.

In addition, the proposed rule would require measures to reduce VOC emissions from centrifugal and reciprocating compressors. As explained in more detail below in section VI.B.4, we are proposing equipment standards for centrifugal compressors. The proposed standards would require the use of dry seal systems. However, we are aware that some owners and operators may need to use centrifugal compressors with wet seals, and we are soliciting comment on the suitability of a compliance option allowing the use of wet seals combined with routing of emissions from the seal liquid through a closed vent system to a control device as an acceptable alternative to installing dry seals.

Our review of reciprocating compressors found that piston rod packing wear produces fugitive emissions that cannot be captured and conveyed to a control device. As a result, we are proposing operational standards for reciprocating compressors, such that the proposed rule would require replacement of the rod packing based on hours of usage. The owner or operator of a reciprocating compressor affected facility would be required to monitor the duration (in hours) that the compressor is operated. When the hours of operation reaches 26,000 hours, the owner or operator would be required to change the rod packing immediately. However, to avoid unscheduled shutdowns when 26,000 hours is reached, owners and operators could track hours of operation such that packing replacement could be coordinated with planned maintenance shutdowns before hours of operation reached 26,000. Some operators may prefer to replace the rod packing on a fixed schedule to ensure that the hours of operation would not reach 26,000 hours. We solicit comment on the appropriateness of a fixed replacement frequency and other considerations that would be associated with regular replacement.

We are also proposing VOC standards for new or modified storage vessels. The proposed rule, which would apply to individual vessels, would require that vessels meeting certain specifications achieve at least 95-percent reduction in VOC emissions. Requirements would apply to vessels with a throughput of 1 barrel of condensate per day or 20 barrels of crude oil per day. These thresholds are equivalent to VOC emissions of about 6 tpy.

For gas processing plants, we are updating the requirements for leak detection and repair (LDAR) to reflect procedures and leak thresholds established by 40 CFR 60, subpart VVa. The existing NSPS requires 40 CFR part 60, subpart VV procedures and thresholds.

For 40 CFR part 60, subpart LLL, which regulates SO_2 emissions from natural gas processing plants, we determined that affected facilities with sulfur feed rate of at least 5 long tons per day or H_2S concentration in the acid gas stream of at least 50 percent can achieve up to 99.9-percent SO_2 control, which is greater than the existing standard. Therefore, we are proposing revision to the performance standards in subpart LLL as a result of this review. For a more detailed discussion of this proposed determination, please see section VI.B.1 of this preamble.

We are proposing to address compliance requirements for periods of startup, shutdown and malfunction (SSM) for 40 CFR part 60, subpart OOOO. The SSM changes are discussed in detail in section VI.B.5 below. In addition, we are proposing to incorporate the requirements in 40 CFR part 60, subpart KKK and 40 CFR part 60, subpart LLL into the new subpart OOOO so that all requirements applicable to the new and modified facilities would be in one subpart. This would simplify and streamline compliance efforts on the part of the oil and natural gas industry and could minimize duplication of notification, recordkeeping and reporting.

B. What are the proposed decisions and actions related to the NESHAP?

This section summarizes the results of our RTR for the Oil and Natural Gas Production and the Natural Gas Transmission and Storage source categories and our proposed decisions concerning these two 1999 NESHAP.

1. Addressing Unregulated Emissions Sources

Pursuant to CAA sections 112(d)(2) and (3), we are proposing MACT standards for subcategories of glycol dehydrators for which standards were not previously developed (hereinafter referred to as the "small dehydrators"). In the Oil and Natural Gas Production source category, the subcategory consists of glycol dehydrators with an actual annual average natural gas flowrate less than 85,000 standard cubic meters per day (scmd) or actual average benzene emissions less than 0.9 megagrams per year (Mg/yr). In the Natural Gas Transmission and Storage source category, the subcategory consists of glycol dehydrators with an actual annual average natural gas flowrate less than 283,000 scmd or actual average benzene emissions less than 0.9 Mg/yr.

The proposed MACT standards for the subcategory of small dehydrators at oil and gas production facilities would require that existing affected sources meet a unit-specific BTEX limit of 1.10×10^{-4} grams BTEX/standard cubic meters (scm)-parts per million by volume (ppmv) and that new affected sources meet a BTEX limit of 4.66×10^{-6} grams BTEX/scm-ppmv. At natural gas transmission and storage affected sources, the proposed MACT standard for the subcategory of small dehydrators would require that existing affected sources meet a unit-specific BTEX emission limit of 6.42×10^{-5} grams BTEX/scm-ppmv and that new affected sources meet a BTEX limit of 1.10×10^{-5} grams BTEX/scm-ppmv.

We are also proposing MACT standards for storage vessels that are currently not regulated under the Oil and Natural Gas Production NESHAP. The current MACT standards apply only to storage vessels with the potential for flash emissions (PFE). As explained in section VII, the original MACT analysis

accounted for all storage vessels. We are, therefore, proposing to apply the current MACT standards of 95-percent emission reduction to every storage vessel at major source oil and natural gas production facilities. In conjunction with this change, we are proposing to amend the definition of associated equipment to exclude all storage vessels, and not just those with the PFE, from being considered "associated equipment." This means that emissions from all storage vessels, and not just those from storage vessels with the PFE, are to be included in the major source determination.

2. What are the proposed decisions and actions related to the risk review?

For both the Oil and Natural Gas Production and the Natural Gas Transmission and Storage source categories, we find that the current levels of emissions allowed by the MACT reflect acceptable levels of risk; however, the level of emissions allowed by the alternative compliance option for glycol dehydrator MACT (*i.e.*, the option of reducing benzene emissions to less than 0.9 Mg/yr in lieu of the MACT standard of 95-percent control) reflects an unacceptable level of risk. We are, therefore, proposing to eliminate the 0.9 Mg/yr alternative compliance option.

In addition, we are proposing that the MACT for these two oil and gas source categories, as revised per above, provide an ample margin of safety to protect public health and prevent adverse environmental effects.

3. What are the proposed decisions and actions related to the technology reviews of the existing NESHAP?

For both the Oil and Natural Gas Production and the Natural Gas Transmission and Storage source categories, we are proposing no revisions to the existing NESHAP pursuant to section 112(d)(6) of the CAA.

4. What other actions are we proposing?

We are proposing an alternative performance test for non-flare, combustion control devices. This test is to be conducted by the combustion control device manufacturer to demonstrate the destruction efficiency achieved by a specific model of combustion control device. This would allow a source to purchase a performance tested device for installation at their site without being required to conduct a site-specific performance test. A definition for "flare" is being proposed in the NESHAP to clarify which combustion control devices fall under the manufacturers' performance testing alternative, and to clarify which devices must be performance tested.

We are also proposing to: Revise the parametric monitoring calibration provisions; require periodic performance testing where applicable; remove the allowance of a design analysis for all control devices other than condensers; remove the requirement for a minimum residence time for an enclosed combustion device; and add recordkeeping and reporting requirements to document carbon replacement intervals. These changes are being proposed to bring the NESHAP up-to-date based on what we have learned regarding control devices and compliance since the original promulgation date.

In addition, we are proposing the elimination of the SSM exemption in the Oil and Natural Gas Production and the Natural Gas Transmission and Storage NESHAP. As discussed in more detail below in section VII, consistent with *Sierra Club* v. *EPA*, 551 F.3d 1019 (D.C. Cir. 2010), the EPA is proposing that the established standards in these two NESHAP apply at all times. We are proposing to revise Table 2 to both 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH to indicate that certain 40 CFR part 63 general provisions relative to SSM do not apply, including: 40 CFR 63.6 (e)(1)(i)[5] and (ii), 40 CFR 63.6(e)(3) (SSM plan requirement), 40 CFR 63.6(f)(1); 40 CFR 63.7(e)(1), 40 CFR 63.8(c)(1)(i) and (iii), and the last sentence of 40 CFR 63.8(d)(3); 40 CFR 63.10(b)(2)(i),(ii), (iv) and (v); 40 CFR 63.10(c)(10), (11) and (15); and 40 CFR 63.10(d)(5). We are also proposing to: (1) Revise 40 CFR 63.771(d)(4)(i) and 40 CFR 63.1281(d)(4)(i) regarding operation of the control device to be consistent with the SSM compliance requirements; and (2) revise the SSM-associated reporting and recordkeeping requirements in 40 CFR 63.774, 40 CFR 63.775, 40 CFR 63.1284 and 40 CFR 63.1285 to require reporting and recordkeeping for periods of malfunction. In addition, as explained below, we are proposing to add an affirmative defense to civil penalties for exceedances of emission limits caused by malfunctions, as well as criteria for establishing the affirmative defense.

The EPA has attempted to ensure that we have neither overlooked nor failed to propose to remove from the existing text any provisions that are inappropriate, unnecessary or redundant in the absence of the SSM exemption, nor included any such provisions in the proposed new regulatory language. We are specifically seeking comment on whether there are any such provisions that we have inadvertently overlooked or incorporated.

We are also revising the applicability provisions of 40 CFR part 63, subpart HH to clarify requirements regarding PTE determination and the scope of a facility subject to subpart HH. Lastly, we are proposing several editorial corrections and plain language revisions to improve these rules.

C. What are the proposed notification, recordkeeping and reporting requirements for this proposed action?

1. What are the proposed notification, recordkeeping and reporting requirements for the proposed NSPS?

The proposed 40 CFR part 60, subpart OOOO includes new requirements for several operations for which there are no existing Federal standards. Most notably, as discussed in sections V.A and VI.B of this preamble, the proposed NSPS will cover completions and recompletions of hydraulically fractured gas wells. We estimate that over 20,000 completions and recompletions annually will be subject to the proposed requirements. Given the number of these operations, we believe that notification and reporting must be streamlined to the extent possible to minimize undue burden on owners and operators, as well as state, local and tribal agencies. In section V.D of this preamble, we discuss some innovative implementation approaches being considered and seek comment on these and other potential methods of streamlining notification and reporting for well completions covered by the proposed rule.

Owners or operators are required to submit initial notifications and annual reports, and to retain records to assist in documenting that they are complying with the provisions of the NSPS. These notification, recordkeeping and reporting activities include both requirements of the 40 CFR part 60 General Provisions, as well as requirements specific to 40 CFR part 60, subpart OOOO.

Owners or operators of affected facilities (except for pneumatic controller and gas wellhead affected

[5] 40 CFR 63.6(e)(1)(i) requires owners or operators to act according to the general duty to "operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions." This general duty to minimize is included in our proposed standard at 40 CFR 63.783(b)(1).

sources) must submit an initial notification within 1 year after becoming subject to 40 CFR part 60, subpart OOOO or by 1 year after the publication of the final rule in the **Federal Register**, whichever is later. For pneumatic controllers, owners and operators are not required to submit an initial notification, but instead are required to report the installation of these affected facilities in their facility's annual report. Owners or operators of wellhead affected facilities (well completions) would also be required to submit a 30-day advance notification of each well completion subject to the NSPS. In addition, annual reports are due 1 year after initial startup date for your affected facility or 1 year after the date of publication of the final rule in the **Federal Register**, whichever is later. The notification and annual reports must include information on all affected facilities owned or operated that were new, modified or reconstructed sources during the reporting period. A single report may be submitted covering multiple affected facilities, provided that the report contains all the information required by 40 CFR 60.5420(b). This information includes general information on the facility (*i.e.*, company name and address, etc.), as well as information specific to individual affected facilities.

For wellhead affected facilities, this information includes details of each well completion during the period, including duration of periods of gas recovery, flaring and venting. For centrifugal compressor affected facilities, information includes documentation that the compressor is fitted with dry seals. For reciprocating compressors, information includes the cumulative hours of operation of each compressor and records of rod packing replacement.

Information for pneumatic device affected facilities includes location and manufacturer specifications of each pneumatic controller installed during the period and documentation that supports any exemption claimed allowing use of high bleed controllers. For controllers installed at gas processing plants, the owner or operator would document the use of non-gas driven devices. For controllers installed in locations other than at gas processing plants, owners or operators would provide manufacturer's specifications that document bleed rate not exceeding 6 cubic feet per hour.

For storage vessel affected facilities, required report information includes information that documents control device compliance, if applicable. For vessels with throughputs below 1 barrel of condensate per day and 21 barrels of crude oil per day, required information also includes calculations or other documentation of the throughput. For onshore gas processing plants, semi-annual reports are required, and include information on number of pressure relief devices, number of pressure relief devices for which leaks were detected and pressure relief devices for which leaks were not repaired, as required in 40 CFR 60.5396 of subpart OOOO.

Records must be retained for 5 years and generally consist of the same information required in the initial notification and annual and semiannual reports.

2. What are the proposed amendments to notification, recordkeeping and reporting requirements for the NESHAP?

We are proposing to revise certain recordkeeping requirements of 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH. Specifically, we are proposing that facilities using carbon adsorbers as a control device keep records of their carbon replacement schedule and records for each carbon replacement. In addition, owners and operators are required to keep records of the occurrence and duration of each malfunction or operation of the air pollution control equipment and monitoring equipment.

In addition, in conjunction with the proposed MACT standards for small glycol dehydration units and storage vessels that do not have the PFE in the proposed amendment to 40 CFR part 63, subpart HH, we are proposing that owners and operators of affected small glycol dehydration units and storage vessels submit an initial notification within 1 year after becoming subject to subpart HH or by 1 year after the publication of the final rule in the **Federal Register**, whichever is later.

Similarly, in conjunction with the proposed MACT standards for small glycol dehydration units in the proposed 40 CFR part 63, subpart HHH amendments, we are proposing that owners and operators of small glycol dehydration units submit an initial notification within 1 year after becoming subject to subpart HHH or by 1 year after the publication of the final rule in the **Federal Register**, whichever is later. Affected sources under either 40 CFR part 63, subpart HH or subpart HHH that plan to be area sources by the compliance dates will be required to submit a notification describing their schedule for the actions planned to achieve area source status.

The proposed amendments to the NESHAP also include additional requirements for the contents of the periodic reports. For both 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH, we are proposing that the periodic reports also include periodic test results and information regarding any carbon replacement events that occurred during the reporting period.

3. *How is information submitted using the Electronic Reporting Tool (ERT)?*

Performance test data are an important source of information that the EPA uses in compliance determinations, developing and reviewing standards, emission factor development, annual emission rate determinations and other purposes. In these activities, the EPA has found it ineffective and time consuming, not only for owners and operators, but also for regulatory agencies, to locate, collect and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

Through this proposal, the EPA is taking a step to increase the ease and efficiency of data submittal and improve data accessibility. Specifically, the EPA is proposing that owners and operators of oil and natural gas sector facilities submit electronic copies of required performance test reports to the EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

As proposed above, data entry would be through an electronic emissions test report structure called the *Electronic Reporting Tool* (ERT). The ERT will be able to transmit the electronic report through the EPA's Central Data Exchange network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

The proposal to submit performance test data electronically to the EPA would apply only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://*

www.epa.gov/ttn/chief/ert/ert_tool.html. We believe that industry would benefit from this proposed approach to electronic data submittal. Having these data, the EPA would be able to develop improved emission factors, make fewer information requests, and promulgate better regulations.

One major advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states testing information that would be required. Another important benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When the EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local and tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities having an electronic database populated with performance test data would save industry, state, local, tribal agencies and the EPA significant time, money and effort while also improving the quality of emission inventories and, as a result, air quality regulations.

D. What are the innovative compliance approaches being considered?

Given the potential number and diversity of sources affected by this action, we are exploring optional approaches to provide the regulated community, the regulators and the public a more effective mechanism that maximizes compliance and transparency while minimizing burden.

Under a traditional approach, owners or operators would provide notifications and keep records of information required by the NSPS. In addition, they would certify compliance with the NSPS as part of a required annual report that would include compliance-related information, such as details of each well completion event and information documenting compliance with other requirements of the NSPS. The EPA, state or local agency would then physically inspect the affected facilities and/or audit the records retained by the owner or operator. As an alternative to the traditional approach, we are seeking an innovative way to provide for more transparency to the public and less burden on the regulatory agencies and owners and operators, especially as it relates to modification of existing sources through recompletions of hydraulically fractured gas wells. These innovative approaches would provide compliance assurance in light of the absence of requirements for CAA title V permitting of non-major sources.

Section V.E of this preamble discusses permitting implications associated with the NSPS and presents a proposed rationale for exempting non-major sources subject to the NSPS from title V permitting requirements. As discussed in sections V.A, V.C and VI.B of this preamble, the proposed NSPS will cover completions and recompletions of hydraulically fractured gas wells. We estimate that over 20,000 completions and recompletions annually will be subject to the proposed requirements. As a result, we believe that notification and reporting associated with well completions must be streamlined to the extent possible to minimize undue burden on owners and operators, as well as state, local and tribal agencies. Though the requirements being proposed here are based on the traditional approach to compliance and do not include specific regulatory provisions for innovative compliance tools, we have included discussions below that describe how some of these optional tools could work, and we will consider providing for such options in the final action. Further, we request comments and suggestions on all aspects of the innovative compliance approaches discussed below and how they may be implemented appropriately. We are seeking comment regarding the scope of application of one or more of these approaches, *i.e.*, which provisions of the standards being proposed here would be suitable for specific compliance approaches, and whether the approaches should be alternatives to the requirements in the regulations.

The guiding principles we are following in considering these approaches to compliance are: (1) Simplicity and ease of understanding and implementation; (2) transparency and public accessibility; (3) electronic implementation where appropriate; and (4) encouragement of compliance by making compliance easier than noncompliance. Below are some tools that, when used in tandem with emissions limits and operational standards, the Agency believes could both assure compliance and transparency, while minimizing burden on affected sources and regulatory agencies.

1. Registration of Wells and Advance Notification of Planned Completions

Although the proposed NSPS will not require approval to drill or complete wells, it is important that regulatory agencies know when completions of hydraulically fractured wells are to be performed. Notification should occur sufficiently in advance to allow for inspections or audits to certify or verify that the operator will have in place and use the appropriate controls during the completion. To that end, the proposed NSPS requires a 30-day advance notification of each completion or recompletion of a hydraulically fractured gas well. The advance notification would require that owners or operators provide the anticipated date of the completion, the geographic coordinates of the well and identifying information concerning the owner or operator and responsible company official. We believe this notification requirement serves as the registration requirement and could be streamlined through optional electronic reporting with web-based public access or other methods. We seek comment on potential methodologies that would minimize burden on operators, while providing timely and useful information for regulators and the public. We also solicit comment on provisions for a follow-up notification one or two days before an impending completion via

telephone or by electronic means, since it is difficult to predict exactly when a well will be ready for completion a month in advance. However, we would expect an owner or operator to provide the follow-up notification only in cases where the completion date was expected to deviate from the original date provided. We ask for suggestions regarding how much advance notification is needed and the most effective method of providing sufficient and accurate advance notification of well completions.

2. Third Party Verification

To complement the annual compliance certification required under the proposed NSPS, we are considering and seeking comment on the potential use of third party verification to assure compliance. Since the emission sources in the oil and natural gas sector, especially well completions, are widely geographically dispersed (often in very remote locations), compliance assurance can be very difficult and burdensome for state, local and tribal agencies and EPA permitting staff, inspectors and compliance officers. Additionally, we believe that verification of the data collection, compilation and calculations by an independent and impartial third party could facilitate the demonstration of compliance for the public. Verification of emissions data can also be beneficial to owners and operators by providing certainty of compliance status.

As mentioned above, notification and reporting requirements associated with well completions are likely applications for third party verification used in tandem with the required annual compliance certification. The third party verification program could be used in a variety of ways to ease regulatory burden on the owners and operators and to leverage compliance assurance efforts of the EPA and state, local and tribal agencies. The third party agent could serve as a clearinghouse for notifications, records and annual compliance certifications submitted by owners and operators. This would provide online access to completion information by regulatory agencies and the public. Having notifications submitted to the clearinghouse would relieve state, local and tribal agencies of the burden of receiving thousands of paper or e-mail well completion notifications each year, yet still provide them quick access to the information. Using a third party agent, it is possible that notifications of well completions could be submitted with an advance period much less than 30 days that could make a 2 day follow-up notification unnecessary. The clearinghouse could also house information on past completions and copies of compliance certifications. We seek comment on whether annual reports for well completions would be needed if a suitable third party verification program was in place and already housed that same information. We also solicit comment on the range of potential activities the third party verification program could handle with regard to well completions.

In this proposed action, there are also provisions for applying third party verification to the required electronic reporting using the ERT (see section V.C.3 above for a discussion of the ERT). As stated above, all sources must use the ERT to submit all performance test reports (required in 40 CFR parts 60, 61 and 63) to the EPA. There is an option in the ERT for state, local and tribal agencies to review and verify that the information submitted to the EPA is truthful, accurate and complete. Third party verifiers could be contractors or other personnel familiar with oil and natural gas exploration and production. We are seeking comment on appropriate third party reviewers and qualifications and registration requirements under such a program. We want to state clearly here that third party verification would not supersede or substitute for inspections or audit of data and information by state, local and tribal agencies and the EPA.

Potential issues with third party verification include costs incurred by industry and approval of third party verifiers. The cost of third party verification would be borne by the affected industries. We are seeking comment on whether third party verification paid for by industry would result in impartial, accurate and complete data information. The EPA, working with state, local and tribal agencies and industry, would expect to develop guidance for third party verifiers. We are seeking comment on whether or not the EPA should approve third party verifiers.

3. Electronic Reporting Using Existing Mechanisms

The proposed 40 CFR part 60, subpart OOOO and final Greenhouse Gas (GHG) Mandatory Reporting Rule, 40 CFR part 98, subpart W, provide details on flare and vented emission sources and how to estimate their emissions. We solicit comment on requiring sources to electronically submit their emissions data for the oil and gas rules proposed here. The EPA's *Electronic Greenhouse Gas Reporting Tool* (e-GGRT) for 40 CFR part 98, subpart W, while used to report emissions at the emissions source level (*e.g.*, well completions, well unloading, compressors, gas plant leaks, etc.), will aggregate emissions at the basin level for e-reporting purposes. As a result, it may be difficult to merge reporting under NSPS subpart OOOO with GHG Reporting Rule subpart W methane reporting, especially if manual reporting is used. However, since the operator would have these emissions details at the individual well level (because that will be how they would develop their basin-wide estimates), we do not believe it would be a significant burden to require owners or operators to report the data they already have for subpart W in an ERT for NSPS and NESHAP compliance purposes. However, if the e-GGRT is not structured to provide for reporting of other pollutants besides GHG (*e.g.*, VOC and HAP), then there may be some modification of the database required to accommodate the other pollutants.

4. Provisions for Encouraging Innovative Technology

The oil and natural gas industry has a long history of innovation in developing new exploration and production methods, along with techniques to minimize product losses and reduce adverse environmental impacts. These efforts are often undertaken with tremendous amounts of research, including pilot applications at operating facilities in the field. Absent regulation, these developmental activities, some of which ultimately are not successful, can proceed without risk of violation of any standards. However, as more emission sources in this source category are covered by regulation, as in the case of the action being proposed here, there likely will be situations where innovation and development of new control techniques potentially could be stifled by risk of violation.

We believe it is important to facilitate, not hinder, innovation and continued development of new technology that can result in enhanced environmental performance of facilities and sources affected by the EPA's regulations. However, any approaches to accommodate technology development must be designed and implemented in accordance with the CAA and other statutes. We seek comment on approaches that may be suitable for allowing temporary field testing of technology in development. These approaches could include not only established procedures under the CAA and its implementing regulations, but new ways to apply or interpret these provisions to avoid impeding

innovation while remaining environmentally responsible and legal.

E. How does the NSPS relate to permitting of sources?

1. How does this action affect permitting requirements?

The proposed rules do not change the Federal requirements for determining whether oil and gas sources are major sources for purposes of nonattainment major New Source Review (NSR), prevention of significant deterioration, CAA title V, or HAP major sources pursuant to CAA section 112. Specifically, if an owner or operator is not currently required to get a major NSR or title V permit for oil and gas sources, including well completions, it would not be required to get a major NSR or title V permit as a result of these proposed standards. EPA-approved state and local major source permitting programs would not be affected. That is, state and local agencies with EPA-approved programs will still make case-by-case major source determinations for purposes of major NSR and title V, relying on the regulatory criteria, as explained in the McCarthy Memo.[6] Consistent with the McCarthy Memo, whether or not a permitting authority should aggregate two or more pollutant-emitting activities into a single major stationary source for purposes of NSR and title V remains a case-by-case decision in which permitting authorities retain the discretion to consider the factors relevant to the specific circumstances of the permitted activities.

In addition, the proposed standards would not change the requirements for determining whether oil and gas sources are subject to minor NSR. Nor would the proposed standards affect existing EPA-approved state and local minor NSR rules, as well as policies and practices implementing those rules. Many state and local agencies have already adopted minor NSR permitting programs that provide for control of emissions from relatively small emission sources, including various pieces of equipment used in oil and gas fields. State and local agencies would be able to continue to use any EPA-approved General Permits, Permits by Rule, and other similar streamlining mechanisms to permit oil and gas sources such as wells. We recently promulgated the final Tribal Minor NSR rules for use in issuing minor issue permits on tribal lands, where many oil and gas sources are located.

The proposed standards will lead to better control of and reduced emissions from oil and gas production, gas processing and transmission and storage, including wells. In some instances, we anticipate that complying with the NSPS would reduce emissions from these smaller sources to below the minor source applicability thresholds. In those cases, sources that would otherwise have been subject to minor NSR would not need to get minor NSR permits as a result of being subject to the NSPS. Accordingly, the number of minor NSR permits, as well as the Agency resources needed to issue them, would be reduced.

We expect the emission reductions achieved from the proposed standards to significantly improve ozone nonattainment problems in areas where oil and gas production occurs. Strategies for attaining and maintaining the national ambient air quality standards (NAAQS) are a function of SIP (or, in some instances, Federal Implementation Plans and Tribal Implementation Plans) pursuant to CAA section 110. In developing plans to attain and maintain the NAAQS, EPA works with state, local or Tribal agencies to account for growth and develop overall control strategies that address existing and expected emissions. The reductions achieved by the standards will make it easier for state and local agencies to plan for and to attain and maintain the ozone NAAQS.

2. How does this action affect applicability of CAA title V?

Under section 502(a) of the CAA, the EPA may exempt one or more non-major sources[7] subject to CAA section 111 (NSPS) standards from the requirements of title V if the EPA finds that compliance with such requirements is "impracticable, infeasible, or unnecessarily burdensome" on such sources. The EPA determine whether to exempt a non-major source from title V at the time we issue the relevant CAA section 111 standards (40 CFR 70.3(b)(2)). We are proposing in this action to exempt from the requirements of title V non-major sources that would be subject to the proposed NSPS for well completions, pneumatic devices, compressors, and/or storage vessels. These non-major sources (hereinafter referred to as the "oil and gas NSPS non-major sources") would not be required to obtain title V permits solely as a result of being subject to one or more of the proposed NSPS identified above (hereinafter referred to as the "proposed NSPS"); however, if they were otherwise required to obtain title V permits, such requirement(s) would not be affected by the proposed exemption.

Consistent with the statute, the EPA believes that compliance with title V permitting is "unnecessarily burdensome" for the oil and gas NSPS non-major sources. The EPA's inquiry into whether this criterion was satisfied is based primarily upon consideration of the following four factors: (1) Whether title V would result in significant improvements to the compliance requirements that we are proposing for the oil and gas NSPS affected non-major sources; (2) whether title V permitting would impose a significant burden on these non-major sources and whether that burden would be aggravated by any difficulty these sources may have in obtaining assistance from permitting agencies; (3) whether the costs of title V permitting for these non-major sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources; and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed Oil and Natural Gas NSPS without relying on title V permits. Not all of the four factors must weigh in favor of an exemption. See 70 FR 75320, 75323 (Title V Exemption Rule). Instead, the factors are to be considered in combination and the EPA determines whether the factors, taken together, support an exemption from title V for the oil and gas non-major sources. Additionally, consistent with the guidance provided by the legislative history of CAA section 502(a),[8] we considered whether exempting the Oil and Natural Gas NSPS non-major sources would adversely affect public health, welfare or the environment. The first factor is whether title V would result in significant improvements to the compliance requirements in the proposed NSPS. A finding that title V would not result in significant improvements to the compliance requirements in the proposed NSPS would support a conclusion that title V permitting is "unnecessary" for non-

[6] *Withdrawal of Source Determinations for Oil and Gas Industries*, September 22, 2009. This memo continues to articulate the Agency's interpretation for major NSR and title V permitting of oil and gas sources.

[7] CAA section 502(a) prohibits title V exemption for any major source, which is defined in CAA section 501(2) and 40 CFR 70.2.

[8] The legislative history of section 502(a) suggests that EPA should not grant title V exemptions where doing so would adversely affect public health, welfare or the environment. (See Chafee-Baucus Statement of Senate Managers, Environment and Natural Resources Policy Division 1990 CAA Leg. Hist. 905, Compiled November 1993.)

major sources subject to the Oil and Natural Gas Production NSPS.

One way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to assure compliance with permit terms and conditions reflecting the emission limitations and control technology requirements imposed in the standard. See 40 CFR 70.6(c)(1) and 40 CFR 71.6(c)(1). The "periodic monitoring" provisions of 40 CFR 70.6(a)(3)(i)(B) and 40 CFR 71.6(a)(3)(i)(B) require new monitoring to be added to the permit when the underlying standard does not already require "periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring)." In addition, title V imposes a number of recordkeeping and reporting requirements that may be important for assuring compliance. These include requirements for a monitoring report at least every 6 months, prompt reports of deviations, and an annual compliance certification. See 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3), 40 CFR 70.6(c)(1) and 40 CFR 71.6(c)(1), and 40 CFR 70.6(c)(5) and 40 CFR 71.6(c)(5). To determine whether title V permits would add significant compliance requirements to the proposed NSPS, we compared the title V monitoring, recordkeeping and reporting requirements mentioned above to those requirements proposed for the Oil and Natural Gas NSPS affected facilities.

For wellhead affected facilities (well completions), the proposed NSPS would require (1) 30-day advance notification of each well completion to be performed; (2) noninstrumental monitoring, which is achieved through documentation and recordkeeping of procedures followed during each completion, including total duration of the completion event, amount of time gas is recovered using reduced emission completion techniques, amount of time gas is combusted, amount of time gas is vented to the atmosphere and justification for periods when gas is combusted or vented rather than being recovered; (3) reports of cases where well completions were not performed in compliance with the NSPS; (4) annual reports that document all completions performed during the reporting period (a single report may be used to document multiple completions conducted by a single owner or operator during the reporting period); and (5) annual compliance certifications submitted with the annual report.

These monitoring, recordkeeping and reporting requirements in the proposed NSPS for well completions are sufficient to ensure that the Administrator, the state, local and tribal agencies and the public are aware of completion events before they are performed to provide opportunity for inspection. Sufficient documentation would also be required to be retained and reported to the Administrator to assure compliance with the NSPS for well completions. In light of the above, we have determined that additional monitoring through title V is not needed and that the monitoring, recordkeeping and reporting requirements described above are sufficient to assure compliance with the proposed requirements for well completions.

With respect to storage vessels, the proposed NSPS would require 95-percent control of VOC emissions. The proposed standard could be met by a vapor recovery unit, a flare control device or other control device. The proposed NSPS would require an initial performance test followed by continuous monitoring of the control device used to meet the 95-percent control. We believe that the monitoring requirements described above are sufficient to assure compliance with the proposed NSPS for storage vessels and, therefore, additional monitoring through title V is not needed. In addition to monitoring, as part of the first factor, we have considered the extent to which title V could potentially enhance compliance through recordkeeping or reporting requirements. The proposed NSPS would require (1) construction, startup and modification notifications, as required by 40 CFR 60.7(a); and (2) annual reports that identify all storage vessel affected facilities of the owner or operator and documentation of periods of non-compliance. The proposed NSPS would also require records documenting liquid throughput of condensate or crude oil (to determine applicability), as provided for in the proposed rule. Recordkeeping would also include records of the initial performance test and other information that document compliance with applicable emission limit. These requirements are similar to those under title V. In light of the above, we believe that the monitoring, recordkeeping and reporting requirements described above are sufficient to assure compliance with the proposed NSPS for storage vessels.

For pneumatic controllers, centrifugal compressors and reciprocating compressors, the proposed NSPS are in the form of operational, work practice or equipment standards.[9] For each of these affected facilities, the proposed NSPS would require: (1) Construction, startup and modification notifications, as required by 40 CFR 60.7(a); (2) annual reports; (3) for each pneumatic controller installed or modified (including replacement of an existing controller), records of location and date of installation and documentation that each controller emits no more than the applicable emission limit or is exempt (with rationale for the exemption); (4) for each centrifugal compressor, records that document that each new or modified compressor is equipped with dry seals; and (5) for each new or modified reciprocating compressor, records of rod packing replacement, including elapsed operating hours since the previous rod packing installation.

For these other affected sources described above, the proposed NSPS provide monitoring in the form of recordkeeping (as described above) that would assure compliance with the proposed operational, work practice or equipment standards. Monitoring by means other than recordkeeping would not be practical or appropriate for these standards. Records are required to ensure that these standards and practices are followed. We believe that the monitoring, recordkeeping and reporting requirements described above are sufficient to assure compliance with the proposed NSPS for pneumatic controllers and compressors.

We acknowledge that title V might provide for additional compliance requirements for these non-major sources, but we have determined, as explained above, that the monitoring, recordkeeping and reporting requirements in this proposed NSPS are sufficient to assure compliance with the proposed standards for well completions, storage vessels, pneumatic controllers and compressors. Further, given the nature of some of the operations and the types of the requirements at issue, the additional compliance requirements under title V would not significantly improve the compliance requirements in this proposed NSPS. For instance, well completions occur over a very short period (generally 3 to 10 days), and the proposed NSPS for pneumatic controllers and centrifugal compressors can be met by simply installing the equipment that meet the proposed emission limit; therefore, the semi-annual reporting requirement under title V would not improve compliance with

[9] The proposed numeric standards for pneumatic controllers reflect the use of specific equipment (either non-gas driven device or low-bleed device).

these proposed NSPS and, in fact, may seem inappropriate for such short term operations.

For the reasons stated above, we believe that title V would not result in significant improvements to the compliance requirements that are provided in this proposed NSPS. Therefore, the first factor supports a conclusion that title V permitting is "unnecessary" for non-major sources subject to the Oil and Natural Gas NSPS.

The second factor we considered is whether title V permitting would impose significant burdens on the oil and natural gas NSPS non-major sources and whether that burden would be aggravated by any difficulty these sources may have in obtaining assistance from permitting agencies. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. See Information Collection Request (ICR) for Part 70 Operating Permit Regulations, January 2007, EPA ICR Number 1587.07. EPA does not have specific estimates for the burdens and costs of permitting the oil and gas NSPS non-major sources; however, there are certain activities associated with the 40 CFR part 70 and 40 CFR part 71 rules. These activities are mandatory and impose burdens on any facility subject to title V. They include reading and understanding permit program regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports; preparing and submitting prompt deviation reports, as defined by the state, which may include a combination of written, verbal and other communication methods; collecting information, preparing and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for 40 CFR part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on 40 CFR part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 40 CFR 70.5, 40 CFR 70.6, and 40 CFR 70.7. The activities described above, which are quite extensive and time consuming, would be a significant burden on the non-major sources that would be subject to the proposed NSPS, in particular for well completion and/or pneumatic devices, considering the short duration of a well completion and the one time equipment installation of a pneumatic controller for meeting the proposed NSPS. Furthermore, some of the non-major sources that would be subject to the proposed NSPS may be small entities that may lack the technical resources and, therefore, need assistance from the permitting authorities to comply with the title V permitting requirements. Based on our projections, over 20,000 well completions (for both new hydraulically fractured gas wells and for existing gas wells that are subsequently fractured or re-fractured) will be performed each year. For pneumatic controller affected facilities, we estimate that approximately 14,000 new controllers would be subject to the NSPS each year. Our estimated numbers of affected facilities that would be subject to the proposed NSPS for storage vessels and compressors are smaller (around 500 compressors and 300 storage vessels). Although we do not know the total number of non-major sources that would be subject to the proposed NSPS, based on the estimated numbers of affected facilities, we anticipate a significant increase in the number of permit applications that permitting authorities would have to process each year. This significant burden on the permitting authorities raises a concern with the potential difficulty or delay that the small entities may face in obtaining sufficient assistance from the permitting authorities.

The third factor we considered is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We concluded, in considering the first factor, that the monitoring, recordkeeping and reporting requirements in this proposed NSPS assure compliance with the proposed standards, that title V would not result in significant improvement to these compliance requirements and, that, in some instances, certain title V compliance requirements may not be appropriate. In addition, as discussed above in our consideration of the second factor, we have concerns with the potential burdens that title V may impose on these sources. In addition, below in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the proposed NSPS. In light of the above, we find that the costs of title V permitting are not justified for the sources we propose to exempt. Accordingly, the third factor supports title V exemption for the oil and gas NSPS non-major sources.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed NSPS for oil and gas sources without relying on title V permits. The CAA provides States the opportunity to take delegation of NSPS. Before the EPA will delegate the program, the EPA will evaluate the state programs to ensure that states have adequate capability to enforce the CAA section 111 regulations and provide assurances that they will enforce the NSPS. In addition, EPA retains authority to enforce this NSPS anytime under CAA sections 111, 113 and 114. Accordingly, we can enforce the monitoring, recordkeeping and reporting requirements, which, as discussed under the first factor, are adequate to assure compliance with this NSPS. Also, states and the EPA often conduct voluntary compliance assistance, outreach and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these proposed standards. We believe that the statutory requirements for implementation and enforcement of this NSPS by the delegated states, the EPA and the additional assistance programs described above together are sufficient to assure compliance with these proposed standards without relying on title V permitting.

Our balance of the four factors strongly supports a finding that title V is unnecessarily burdensome for the oil and gas non-major sources. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the proposed NSPS and, as explained above, some of the title V requirements may not be appropriate for certain operations and/or proposed standards. We are also concerned with the potential burden that title V may impose on some of these

sources. In light of little or no potential gain in compliance if title V were required, we do not believe that the costs of title V permitting is justified in this case. Finally, there are adequate implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is "unnecessarily burdensome" for the oil and gas non-major sources.

In addition to evaluating whether compliance with title V requirements is "unnecessarily burdensome," EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting oil and gas NSPS non-major sources from title V requirements would adversely affect public health, welfare or the environment. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one, title V would not lead to significant improvements in the compliance requirements for the proposed NSPS. For the reason stated above, we believe that exempting these non-major sources from title V permitting requirements would not adversely affect public health, welfare or the environment.

On the contrary, we are concerned that requiring title V in this case could potentially adversely affect public health, welfare or the environment. As mentioned above, we anticipate a significant increase in the number of permit applications that permitting authorities would have to process each year. Depending on the number of non-major sources that would be subject to this rule, requiring permits for those sources, at least in the first few years of implementation, could potentially adversely affect public health, welfare or the environment by shifting state agencies resources away from assuring compliance for major sources (which cannot be exempt from title V) to issuing new permits for these non-major sources, potentially reducing overall air program effectiveness.

Based on the above analysis, we conclude that title V permitting would be "unnecessarily burdensome" for oil and gas NSPS non-major sources. We are, therefore, proposing that these non-major sources be exempt from title V permitting requirements.

VI. Rationale for Proposed Action for NSPS

A. What did we evaluate relative to NSPS?

As noted above, there are two existing NSPS that address emissions from the Oil and Natural Gas source category. These NSPS are relatively narrow in scope, as they address emissions only at natural gas processing plants. Specifically, 40 CFR part 60, subpart KKK addresses VOC emissions from leaking equipment at onshore natural gas processing plants and 40 CFR part 60, subpart LLL addresses SO_2 emissions from natural gas processing plants.

CAA section 111(b)(1)(B) requires the EPA to review and revise, if appropriate, NSPS standards. Accordingly, we evaluated whether the existing NSPS reflect the BSER for the emission sources that they address. This review was conducted by examining currently used, new and emerging control systems and assessing whether they represent advances in emission reduction techniques from those upon which the existing NSPS are based, including advances in LDAR approaches and SO_2 control at natural gas processing plants. For each new or emerging control option identified, we then evaluated emission reductions, costs, energy requirements and non-air quality impacts, such as solid waste generation.

In this package, we have also evaluated whether there were additional pollutants emitted by facilities in the Oil and Natural Gas source category that warrant regulation and for which we have adequate information to promulgate standards of performance. Finally, we have identified additional processes in the Oil and Natural Gas source category for which it may be appropriate to develop performance standards. This would include processes that emit the currently regulated pollutants, VOC and SO_2, as well as any additional pollutants for which we determined regulation to be appropriate.

B. What are the results of our evaluations and proposed actions relative to NSPS?

1. Do the existing NSPS reflect the BSER for sources covered?

Consistent with our obligations under CAA section 111(b), we evaluated whether the control options reflected in the current NSPS for the Oil and Natural Gas source category still represent BSER. To evaluate the BSER options for equipment leaks, we reviewed EPA's current LDAR programs, the Reasonably Available Control Technology (RACT)/Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC) database, and emerging technologies that have been identified by partners in the Natural Gas STAR program.

The current NSPS for equipment leaks of VOC at natural gas processing plants (40 CFR part 60, subpart KKK) requires compliance with specific provisions of 40 CFR part 60, subpart VV, which is a LDAR program, based on the use of EPA Method 21 to identify equipment leaks. In addition to the subpart VV requirements, we reviewed the LDAR requirements in 40 CFR part 60, subpart VVa. This LDAR program is considered to be more stringent than the subpart VV requirements, because it has lower component leak threshold definitions and more frequent monitoring, in comparison to the subpart VV program. Furthermore, subpart VVa requires monitoring of connectors, while subpart VV does not. We also reviewed options based on optical gas imaging.

As mentioned above, the currently required LDAR program for natural gas processing plants (40 CFR part 60, subpart KKK) is based on EPA Method 21, which requires the use of an organic vapor analyzer to monitor components and to measure the concentration of the emissions in identifying leaks. We recognize that there have been advancements in the use of optical gas imaging to detect leaks from these same types of components. These instruments do not yet provide a direct measure of leak concentrations. The instruments instead provide a measure of a leak relative to an instrument specific calibration point. Since the promulgation of 40 CFR part 60, subpart KKK (which requires Method 21 leak measurement monthly), the EPA has updated the 40 CFR part 60 General Provisions to allow the use of advanced leak detection tools, such as optical gas imaging and ultrasound equipment as an alternative to the LDAR protocol based on Method 21 leak measurements (see 40 CFR 60.18(g)). The alternative work practice allowing use of these advanced technologies includes a provision for conducting a Method 21-based LDAR check of the regulated equipment annually to verify good performance.

In our review, we evaluated 4 options in considering BSER for VOC equipment leaks at natural gas processing plants. One option we evaluated consists of changing from a 40 CFR part 60, subpart VV-level program, which is what 40 CFR part 60, subpart KKK currently requires, to a 40 CFR part 60, subpart VVa program, which applies to new

synthetic organic chemical plants after 2006. Subpart VVa lowers the leak definition for valves from 10,000 parts per million (ppm) to 500 ppm, and requires the monitoring of connectors. In our analysis of these impacts, we estimated that, for a typical natural gas processing plant, the incremental cost effectiveness of changing from the current subpart VV-level program to a subpart VVa-level program using Method 21 is $3,352 per ton of VOC reduction.

In evaluating 40 CFR part 60, subpart VVa-level LDAR at processing plants, we also analyzed separately the individual types of components (valves, connectors, pressure relief devices and open-ended lines) to determine cost effectiveness for individual components. Detailed discussions of these component-by-component analyses are included in the TSD in the docket. Cost effectiveness ranged from $144 per ton of VOC (for valves) to $4,360 per ton of VOC (for connectors), with no change in requirements for pressure relief devices and open-ended lines.

Another option we evaluated for gas processing plants was the use of optical gas imaging combined with an annual EPA Method 21 check (*i.e.*, the alternative work practice for monitoring equipment for leaks at 40 CFR 60.18(g)). We had previously determined that the VOC reduction achieved by this combination of optical gas imaging and Method 21 would be equivalent to reductions achieved by the 40 CFR part 60, subpart VVa-level program. Based on that emission reduction level, we determined the cost effectiveness of this option to be $6,462 per ton of VOC reduction. This analysis is based on the facility purchasing an optical gas imaging system costing $85,000. However, we identified at least one manufacturer who rents the optical gas imaging systems. That manufacturer rents the optical gas imaging system for $3,950 per week. Using this rental cost in place of the purchase cost, the VOC cost effectiveness of the monthly optical gas imaging combined with annual Method 21 checks is $4,638 per ton of VOC reduction.[10] A third option we evaluated consisted of monthly optical gas imaging without an annual Method 21 check. We estimated the annual cost of the monthly optical gas imaging LDAR program to be $76,581, based on camera purchase, or $51,999, based on camera rental. However, because we were unable to estimate the VOC emissions achieved by an optical imaging program alone, we were unable to estimate the cost effectiveness of this option.

Finally, we evaluated a fourth option similar to the third option, except that the optical gas imaging would be performed annually rather than monthly. For this option, we estimated the annual cost to be $43,851, based on camera purchase, or $18,479, based on camera rental.

We request comment on the applicability of an LDAR program based solely on the use of optical gas imaging. Of most use to us would be information on the effectiveness of this and, potentially, other advanced measurement technologies, to detect and repair small leaks on the same order or smaller than specified in the 40 CFR part 60, subpart VVa equipment leak requirements and the effects of increased frequency of and associated leak detection, recording and repair practices.

Because we could not estimate the cost effectiveness of options 3 and 4, we could not identify either of these two options as BSER for reducing VOC leaks at gas processing plants. Because options 1 and 2 have achieved equivalent VOC reduction and are both cost effective, we believe that both options 1 and 2 reflect BSER for LDAR for natural gas processing plants. As mentioned above, option 1 is the LDAR in 40 CFR part 60, subpart VVa and option 2 is the alternative work practice at 40 CFR 60.18(g) and is already available to use as an alternative to subpart VVa LDAR. Therefore, we propose that the NSPS for equipment leaks of VOC at gas processing plants be revised to require compliance with the subpart VVa equipment leak requirements.

For 40 CFR part 60, subpart LLL, we reviewed control systems for SO_2 emissions from sweetening units located at natural gas processing plants, including those followed by a sulfur recovery unit. Subpart LLL provides specific standards for SO_2 emission reduction efficiency, on the basis of sulfur feed rate and the sulfur content of the natural gas.

According to available literature, the most widely used process for converting H_2S in acid gases (*i.e.*, H_2S and CO_2) separated from natural gas by a sweetening process (such as amine treating) into elemental sulfur is the Claus process. Sulfur recovery efficiencies are higher with higher concentrations of H_2S in the feed stream due to the thermodynamic equilibrium limitation of the Claus process. The Claus sulfur recovery unit produces elemental sulfur from H_2S in a series of catalytic stages, recovering up to 97-percent recovery of the sulfur from the acid gas from the sweetening process. Further, sulfur recovery is accomplished by making process modifications or by employing a tail gas treatment process to convert the unconverted sulfur compounds from the Claus unit.

We evaluated process modifications and tail gas treatment options when we proposed 40 CFR part 60, subpart LLL. 49 FR 2656, 2659–2660 (1984). As we explained in the preamble to the proposed subpart LLL, control through sulfur recovery with tail gas treatment may not always be cost effective, depending on sulfur feed rate and inlet H_2S concentrations. Therefore, other methods of increasing sulfur recovery via process modifications were evaluated. As shown in the original evaluation, the performance capabilities and costs of each of these technologies are highly dependent on the ratio of H_2S and CO_2 in the gas stream and the total quantity of sulfur in the gas stream being treated. The most effective means of control was selected as BSER for the different stream characteristics. As a result, separate emissions limitations were developed in the form of equations that calculate the required initial and continuous emission reduction efficiency for each plant. The equations were based on the design performance capabilities of the technologies selected as BSER relative to the gas stream characteristics. 49 FR 2656, 2663–2664 (1984). The emission limit for sulfur feed rates at or below 5 long tons per day, regardless of H_2S content, was 79 percent. For facilities with sulfur feed rates above 5 long tons per day, the emission limits ranged from 79 percent at an H_2S content below 10 percent to 99.8 percent for H_2S contents at or above 50 percent.

To review these emission limitations, we performed a search of the RBLC database and state regulations. No state regulations identified had emission limitations more stringent than 40 CFR part 60, subpart LLL. However, the RBLC database search identified two entries with SO_2 emission reductions of 99.9 percent. One entry is for a facility in Bakersfield, California, with a 90 long ton per day sulfur recovery unit followed by an amine-based tail-gas treating unit. The second entry is for a facility in Coden, Alabama, with a sulfur recovery unit with a sulfur feed rate of 280 long tons per day, followed by selective catalytic reduction and a tail gas incinerator. However, neither of these entries contained information regarding the H_2S contents of the feed

[10] Because optical gas imaging is used to view several pieces of equipment at a facility at once to survey for leaks, options involving imaging are not amenable to a component by component analysis.

stream. Because the sulfur recovery efficiency of these large sized plants was greater than 99.8 percent, we reevaluated the original data. Based on the available cost information, it appears that a 99.9-percent efficiency is cost effective for facilities with a sulfur feed rate greater than 5 long tons per day and H_2S content equal to or greater than 50 percent. Based on our review, we are proposing that the maximum initial and continuous efficiency for facilities with a sulfur feed rate greater than 5 long tons per day and an H_2S content equal to or greater than 50 percent be raised to 99.9 percent. We are not proposing to make changes to the equations.

Our search of the RBLC database did not uncover information regarding costs and achievable emission reductions to suggest that the emission limitations for facilities with a sulfur feed rate less than 5 long tons per day or H_2S content less than 50 percent should be modified. Therefore, we are not proposing any changes to the emissions limitations for facilities with sulfur feed rate and H_2S content less than 5 long tons per day and 50 percent, respectively.

2. What pollutants are being evaluated in this Oil and Natural Gas NSPS package?

The two current NSPS for the Oil and Natural Gas source category address emissions of VOC and SO_2. In addition to these pollutants, sources in this source category also emit a variety of other pollutants, most notably, air toxics. As discussed elsewhere in this notice, there are NESHAP that address air toxics from the oil and natural gas sector.

In addition, processes in the Oil and Natural Gas source category emit significant amounts of methane. The 1990–2009 U.S. GHG Inventory estimates 2009 methane emissions from Petroleum and Natural Gas Systems (not including petroleum refineries) to be 251.55 $MMtCO_2e$ (million metric tons of CO_2-equivalents (CO_2e)).[11] The emissions estimated from well completions and recompletions exclude a significant number of wells completed in tight sand plays, such as the Marcellus, due to availability of data when the 2009 Inventory was developed. The estimate in this proposal includes an adjustment for tight sand plays (being considered as a planned improvement in development of the 2010 Inventory). This adjustment would increase the 2009 Inventory estimate by 76.74 $MMtCO_2e$. The total methane emissions from Petroleum and Natural Gas Systems, based on the 2009 Inventory, adjusted for tight sand plays and the Marcellus, is 328.29 $MMtCO_2e$. Although this proposed rule does not include standards for regulating the GHG emissions discussed above, we continue to assess these significant emissions and evaluate appropriate actions for addressing these concerns. Because many of the proposed requirements for control of VOC emissions also control methane emissions as a co-benefit, the proposed VOC standards would also achieve significant reduction of methane emissions.

Significant emissions of oxides of nitrogen (NO_X) also occur at oil and natural gas sites due to the combustion of natural gas in reciprocating engines and combustion turbines used to drive the compressors that move natural gas through the system, and from combustion of natural gas in heaters and boilers. While these engines, turbines, heaters and boilers are co-located with processes in the oil and natural gas sector, they are not in the Oil and Natural Gas source category and are not being addressed in this action. The NO_X emissions from engines and turbines are covered by the Standards of Performance for Stationary Spark Internal Combustion Engines (40 CFR part 60, subpart JJJJ) and Standards of Performance for Stationary Combustion Turbines (40 CFR part 60, subpart KKKK), respectively.

An additional source of NO_X emissions would be pit flaring of VOC emissions from well completions during periods where REC is not feasible, as would be required under our proposed operational standards for wellhead affected facilities. As discussed below in section VI.B.4 (well completion), pit flaring is the only way we identified of controlling VOC emissions during these periods. Because there is no way of directly measuring the NO_X produced, nor is there any way of applying controls other than minimizing flaring, we propose to allow flaring only when REC is not feasible. We have included our estimates of NO_X formation from pit flaring in our discussion of secondary impacts in section VI.B.4.

3. What emission sources are being evaluated in this Oil and Natural Gas NSPS package?

The current NSPS only cover emissions of VOC and SO_2 from one type of facility in the oil and natural gas sector, which is the natural gas processing plant. This is the only type of facility in the Oil and Natural Gas source category where we would expect SO_2 to be emitted directly, although H_2S contained in sour gas, when oxidized in the atmosphere or combusted in boilers and heaters in the field, forms SO_2 as a product of oxidation. These field boilers and heaters are not part of the Oil and Natural Gas source category and are generally too small to be regulated by the NSPS covering boilers (*i.e.*, they have a heat input of less than 10 million British Thermal Units per hour). However, we may consider addressing them as part of a future sector-based strategy for the oil and natural gas sector.

In addition to VOC emissions from gas processing plants, there are numerous sources of VOC throughout the oil and natural gas sector that are not addressed by the current NSPS. As explained above in section V.A, pursuant to CAA section 111(b), to the extent necessary, we are modifying the listed category to include all segments of the oil and natural gas industry for regulation. We are also proposing VOC standards to cover additional processes at oil and natural gas operations. These include NSPS for VOC from gas well completions, pneumatic controllers, compressors and storage vessels.

We believe that produced water ponds are also a potentially significant source of emissions, but we have only limited information. We, therefore, solicit comments on produced water ponds, particularly in the following subject areas:

(a) We are requesting comments pertaining to methods for calculating emissions. The State of Colorado currently uses a mass balance that assumes 100 percent of the VOC content is emitted to the atmosphere. Water9, an air emissions model, is another option that has some limitations, including poor methanol estimation.

(b) We are requesting additional information on typical VOC content in produced water and any available chemical analyses, including data that could help clarify seasonal variations or differences among gas fields. Additionally, we request data that increase our understanding of how changing process variables or age of wells affect produced water output and VOC content.

(c) We solicit information on the size and throughput capacity of typical evaporation pond facilities and request suggestions on parameters that could be used to define affected facilities or affected sources. We also seek information on impacts of smaller evaporation pits that are co-located with drilling operations, whether those

[11] U.S. EPA. *Inventory of U.S. Greenhouse Gas Inventory and Sinks.* 1990–2009. *http://www.epa.gov/climatechange/emissions/downloads10/US-GHG-Inventory-2010_ExecutiveSummary.pdf.*

warrant control and, if so, how controls should be developed.

(d) An important factor is cost of emission reduction technologies, including recovery credits or cost savings realized from recovered salable product. We are seeking information on these considerations as well.

(e) We are also seeking information on any limitations for emission reduction technologies such as availability of electricity, waste generation and disposal and throughput and concentration constraints.

(f) Finally, we solicit information on separator technologies that are able to improve the oil-water separation efficiency.

4. What are the rationales for the proposed NSPS?

We have provided below our rationales for the proposed BSER determinations and performance standards for a number of VOC emission sources in the Oil and Natural Gas source category that are not covered by the existing NSPS. Our general process for evaluating systems of emission reduction for the emission sources discussed below included: (1) Identification of available control measures; (2) evaluation of these measures to determine emission reductions achieved, associated costs, nonair environmental impacts, energy impacts and any limitations to their application; and (3) selection of the control techniques that represent BSER based on the information we considered.

We identified the control options discussed in this package through our review of relevant state and local requirements and mitigation measures developed and reported by the EPA's Natural Gas STAR program. The EPA's Natural Gas STAR program has worked with industry partners since 1993 to identify cost effective measures to reduce emissions of methane and other pollutants from natural gas operations. We relied heavily on this wealth of information in conducting this review. We also identified state regulations, primarily in Colorado and Wyoming, which require mitigation measures for some emission sources in the Oil and Natural Gas source category.

a. NSPS for Well Completions

Well completion activities are a significant source of VOC emissions, which occur when natural gas and non-methane hydrocarbons are vented to the atmosphere during flowback of a hydraulically fractured gas well. Flowback emissions are short-term in nature and occur over a period of several days following fracturing of a new well or refracturing of an existing well. Well completions include multiple steps after the well bore hole has reached the target depth. These steps include inserting and cementing-in well casing, perforating the casing at one or more producing horizons, and often hydraulically fracturing one or more zones in the reservoir to stimulate production. Well recompletions may also include hydraulic fracturing. Hydraulic fracturing is one technique for improving gas production where the reservoir rock is fractured with very high pressure fluid, typically water emulsion with a proppant (generally sand) that "props open" the fractures after fluid pressure is reduced. Emissions are a result of the backflow of the fracture fluids and reservoir gas at high volume and velocity necessary to lift excess proppant and fluids to the surface. This multi-phase mixture is often directed to a surface impoundment where natural gas and VOC vapors escape to the atmosphere during the collection of water, sand and hydrocarbon liquids. As the fracture fluids are depleted, the backflow eventually contains more volume of natural gas from the formation. Wells that are fractured generally have great amounts of emissions because of the extended length of the flowback period required to purge the well of the fluids and sand that are associated with the fracturing operation. Along with the fluids and sand from the fracturing operation, the 3- to 10-day flowback period also results in emissions of natural gas and VOC that would not occur in large quantities at oil wells or at natural gas wells that are not fractured. Thus, we estimate that gas well completions involving hydraulic fracturing vent substantially more VOC, approximately 200 times more, than completions not involving hydraulic fracturing. Specifically, we estimate that uncontrolled well completion emissions for a hydraulically fractured gas well are approximately 23 tons of VOC, where emissions for a conventional gas well completion are around 0.12 tons VOC. These estimates are explained in detail in the TSD available in the docket. Based on our review, we believe that emissions from recompletions of previously completed wells that are fractured or refractured to stimulate production or to begin production from a new production horizon are of similar magnitude and composition as emissions from completions of new wells that have been hydraulically fractured.

EPA has based the NSPS impacts analysis on best available emission data. However, we recognize that there is uncertainty associated with our estimates. For both new completions and recompletions, there are a variety of factors that will determine the length of the flowback period and actual volume of emissions such as the number of zones, depth, pressure of the reservoir, gas composition, etc. This variability means there will be some wells which emit more than the estimated emission factor and some wells that emit less.

During our review, we examined information from the Natural Gas STAR program and the Colorado and Wyoming state rules covering well completions. We identified two subcategories of fractured gas wells: (1) Non-exploratory and non-delineation wells; and (2) exploratory and delineation wells. An exploratory well is the first well drilled to determine the presence of a producing reservoir and the well's commercial viability. A delineation well is a well drilled to determine the boundary of a field or producing reservoir. Because exploratory and delineation wells are generally isolated from existing producing wells, there are no gathering lines available for collection of gas recovered during completion operations. In contrast, non-exploratory and non-delineation wells are located where existing, producing wells are connected to gathering lines and are, therefore, able to be connected to a gathering line to collect recovered salable natural gas product that would otherwise be vented to the atmosphere or combusted.

For subcategory 1, we identified "green" completion, which we refer to as REC, as an option for reducing VOC emissions during well completions. REC are performed by separating the flowback water, sand, hydrocarbon condensate and natural gas to reduce the portion of natural gas and VOC vented to the atmosphere, while maximizing recovery of salable natural gas and VOC condensate. In some cases, for a portion of the completion operation, such as when CO_2 or nitrogen is injected with the fracture water, initial gas produced is not of suitable quality to introduce into the gathering line due to CO_2 or nitrogen content or other undesirable characteristic. In such cases, for a portion of the flowback period, gas cannot be recovered, but must be either vented or combusted. In practice, REC are often combined with combustion to minimize the amount of gas and condensate being vented. This combustion process is rather crude, consisting of a horizontal pipe

downstream of the REC equipment, fitted with a continuous ignition source and discharging over a pit near the wellhead. Because of the nature of the flowback (*i.e.*, with periods of water, condensate, and gas in slug flow), conveying the entire portion of this stream to a traditional flare control device or other control device, such as a vapor recovery unit, is not feasible. These control devices are not designed to accommodate the multiphase flow consisting of water, sand and hydrocarbon liquids, along with the gas and vapor being controlled. Although "pit flaring" does not employ a traditional flare control device, and is not capable of being tested or monitored for efficiency due to the multiphase slug flow and intermittent nature of the discharge of gas, water and sand over the pit, it does provide a means of minimizing vented gas and is preferable to venting. Because of the rather large exposed flame, open pit flaring can present a fire hazard or other undesirable impacts in some situations (*e.g.*, dry, windy conditions, proximity to residences, etc.). As a result, we are aware that owners and operators may not be able to pit flare unrecoverable gas safely in every case. In some cases, pit flaring may be prohibited by local ordinance.

Equipment required to conduct REC may include tankage, special gas-liquid-sand separator traps and gas dehydration. Equipment costs associated with REC will vary from well to well. Typical well completions last between 3 and 10 days and costs of performing REC are projected to be between $700 and $6,500 per day, including a cost of approximately $3,523 per completion event for the pit flaring equipment. However, there are savings associated with the use of REC because the gas recovered can be incorporated into the production stream and sold. In fact, we estimate that REC will result in an overall net cost savings in many cases.

The emission reductions for a hydraulically fractured well are estimated to be around 22 tons of VOC. Based on an average incremental cost of $33,237 per completion, the cost effectiveness of REC, without considering any cost savings, is around $1,516 per ton of VOC (which we have previously found to be cost effective on average). When the value of the gas recovered (approximately 150 tons of methane per completion) is considered, the cost effectiveness is estimated as an average net savings of $99 per ton VOC reduced, using standard discount rates. We believe that these costs are very reasonable, given the emission reduction that would be achieved. Aside from the potential hazards associated with pit flaring, in some cases, we did not identify any nonair environmental impacts, health or energy impacts associated with REC combined with combustion. However, pit flaring would produce NO_X emissions. Because we believe that these emissions cannot be controlled or measured directly due to the open combustion process characteristic of pit flaring, we used published emission factors (EPA Emission Guidelines AP–42) to estimate the NO_X emissions for purposes of assessing secondary impacts. For category 1 well completions, we estimated that 0.02 tons of NO_X are produced per event. This is based on the assumption that 5 percent of the flowback gas is combusted by the combustion device. The 1.2 tons of VOC controlled during the pit flaring portion of category 1 well completions is approximately 57 times greater than the NO_X produced by pit flaring. Thus, we believe that the benefit of the VOC reduction far outweighs the secondary impact of NO_X formation during pit flaring.

We believe that, based on the analysis above, REC in combination with combustion is BSER for subcategory 1 wells. We considered setting a numerical performance standard for subcategory 1 wells. However, it is not practicable to measure the emissions during pit flaring or venting because the gas is discharged over the pit along with water and sand in multiphase slug flow. Therefore, we believe it is not feasible to set a numerical performance standard. Pursuant to section 111(h)(2) of the CAA, we are proposing an operational standard for subcategory 1 wells that would require a combination of REC and pit flaring to minimize venting of gas and condensate vapors to the atmosphere, with provisions for venting in lieu of pit flaring for situations in which pit flaring would present safety hazards or for periods when the flowback gas is noncombustible due to high concentrations of nitrogen or CO_2. The proposed operational standard would be accompanied by requirements for documentation of the overall duration of the completion event, duration of recovery using REC, duration of combustion, duration of venting, and specific reasons for venting in lieu of combustion.

We recognize that there is heterogeneity in well operations and costs, and that while RECs may be cost-effective on average, they may not be for all operators. Nonetheless, EPA is proposing to require an operational standard rather than a performance-based standard (*e.g.*, requiring that some percentage of emissions be flared or captured), because we believe there are no feasible ways for operators to measure emissions with enough certainty to demonstrate compliance with a performance-based standard for REC in combination with pit flaring. The EPA requests comment on this and seeks input on whether alternative approaches to requiring REC for all operators with access to pipelines may exist that would allow operators to meet a performance-based standard if they can demonstrate that an REC is not cost effective.

We have discussed above certain situations where unrecoverable gas would be vented because pit flaring would present a fire hazard or is infeasible because gas is noncombustible due to high concentrations of nitrogen or CO_2. We solicit comment on whether there are other such situations where flaring would be unsafe or infeasible, and potential criteria that would support venting in lieu of pit flaring. In addition, we learned that coalbed methane reservoirs may have low pressure, which would present a technical barrier for performing a REC because the well pressure may not be substantial enough to overcome gathering line pressure. In addition, we identified that coalbed methane wells often have low to almost no VOC emissions, even following the hydraulic fracturing process. We solicit comment on criteria and thresholds that could be used to exempt some well completion operations occurring in coalbed methane reservoirs from the requirements for subcategory 1 wells.

Of the 25,000 new and modified fractured gas wells completed each year, we estimate that approximately 3,000 to 4,000 currently employ reduced emission completion. We expect this number to increase to over 21,000 REC annually as operators comply with the proposed NSPS. We estimate that approximately 9,300 new wells and 12,000 existing wells will be fractured or refractured annually that would be subject to subcategory 1 requirements under the NSPS. We believe that there will be a sufficient supply of REC equipment available by the time the NSPS becomes effective. However, energy availability could be affected if a shortage of REC equipment was allowed to cause delays in well completions. We request comment on whether sufficient supply of this equipment and personnel to operate it will be available to accommodate the increased number of REC by the effective date of the NSPS. We also request specific estimates of

how much time would be required to get enough equipment in operation to accommodate the full number of REC performed annually.

In the event that public comments indicate that available equipment would likely be insufficient to accommodate the increase in number of REC performed, we are considering phasing in requirements for well completions that would achieve an overall comparable level of environmental benefit. For example, operators performing completions of fractured or refractured existing wells (*i.e.*, modified wells) could be allowed to control emissions through pit flaring instead of REC for some period of time. After some date certain, all modified wells would be subject to REC. We solicit comment on the phasing of requirements for REC along with suggestions for other ways to address a potential short-term REC equipment shortage that may hinder operators' compliance with the proposed NSPS, while also achieving a comparable level of reduced emissions to the air.

Although we have determined that, on average, reduced emission completions are cost effective, well and reservoir characteristics could vary, such that some REC are more cost effective than others. Unlike most stationary source controls, REC equipment is used only for a 3 to 10 day period. Our review found that most operators contract with service companies to perform REC rather than purchase the equipment themselves, which was reflected in our economic analysis. It is also possible that the contracting costs of supplying and operating REC equipment may rise in the short term with the increased demand for those services. We request comment and any available technical information to judge whether our assumption of $33,237 per well completion for this service given the projected number of wells in 2015 subject to this requirement is accurate.

We believe that the proposed rule regulates only significant emission sources for which controls are cost-effective. Nevertheless, we solicit comment and supporting data on appropriate thresholds (*e.g.*, pressure, flowrate) that we should consider in specifying which well completions are subject to the REC requirements for subcategory 1 wells. Comments specifying thresholds should include an analysis of why sources below these thresholds are not cost effective to control.

In addition, there may be economic, technical or other opportunities or barriers associated with performing cost effective REC that we have not identified in our review. For example, some small regulated entities may have an increased source of revenue due to the captured product. On the other hand, some small regulated entities may have less access to REC than larger regulated entities might have. We request information on such opportunities and barriers that we should consider and suggestions for how we may take them into account in structuring the NSPS.

The second subcategory of fractured gas wells includes exploratory wells or delineation wells. Because these types of wells generally are not in proximity to existing gathering lines, REC is not an option, since there is no infrastructure in place to get the recovered gas to market or further processing. For these wells, the only potential control option we were able to identify is pit flaring, described above. As explained above, because of the slug flow nature of the flowback gas, water and sand, control by a traditional flare control device or other control devices, such as vapor recovery units, is infeasible, which leaves pit flaring as the only practicable control system for subcategory 2 wells. As also discussed above, open pit flaring can present a fire hazard or other undesirable impacts in some situations. Aside from the potential hazards associated with pit flaring, in some cases, we did not identify any nonair environmental impacts, health or energy impacts associated with pit flaring. However, pit flaring would produce NO_X emissions. As in the case of category 1 wells, we believe that these emissions cannot be controlled or measured directly due to the open combustion process characteristic of pit flaring. We again used published emission factors to estimate the NO_X emissions for purposes of assessing secondary impacts. For category 2 well completions, we estimated that 0.32 tons of NO_X are produced as secondary emissions per completion event. This is based on the assumption that 95 percent of flowback gas is combusted by the combustion device. The 22 tons of VOC reduced during the pit flaring used to control category 2 well completions is approximately 69 times greater than the NO_X produced. Thus, we believe that the benefit of the VOC reduction far outweighs the secondary impact of NO_X formation during pit flaring.

In light of the above, we propose to determine that BSER for subcategory 2 wells would be pit flaring. As we explained above, it is not practicable to measure the emissions during pit flaring or venting because the gas is discharged during flowback mixed with water and sand in multiphase slug flow. It is, therefore, not feasible to set a numerical performance standard.

Pursuant to CAA section 111(h)(2), we are proposing an operational standard for subcategory 2 wells that requires minimization of venting of gas and hydrocarbon vapors during the completion operation through the use of pit flaring, with provisions for venting in lieu of pit flaring for situations in which flaring would present safety hazards or for periods when the flowback gas is noncombustible due to high concentrations of nitrogen or carbon dioxide.

Consistent with requirements for subcategory 1 wells, owners or operators of subcategory 2 wells would be required to document completions and provide justification for periods when gas was vented in lieu of combustion. We solicit comment on whether there are other such situations where flaring would be unsafe or infeasible and potential criteria that would support venting in lieu of pit flaring.

For controlling completion emissions at oil wells and conventional (non-fractured) gas wells, we have identified and evaluated the following control options: REC in conjunction with pit flaring and pit flaring alone. Due to the low uncontrolled VOC emissions of approximately 0.007 ton per completion and, therefore, low potential emission reductions from these events, the cost per ton of reduction based on REC would be extremely high (over $700,000 per ton of VOC reduced). We evaluated the use of pit flaring alone as a system for controlling emissions from oil wells and conventional gas wells and determined that the cost cost-effectiveness would be approximately $520,000 per ton for oil wells and approximately $32,000 per ton for conventional gas wells. In light of the high cost per ton of VOC reduction, we do not consider either of these control options to be BSER for oil wells and conventional wells.

We propose that fracturing (or refracturing) and completion of an existing well (*i.e.*, a well existing prior to August 23, 2011) is considered a modification under CAA section 111(a), because physical change occurs to the existing well, which includes the wellbore, casing and tubing, resulting in an emissions increase during the completion operation. The physical change, in this case, would be caused by the reperforation of the casing and tubing, along with the refracturing of the wellbore. The increased VOC emissions would occur during the flowback period following the fracturing or refracturing operation. Therefore, the proposed

standards for category 1 and category 2 wells would apply to completions at existing fractured or refractured wells.

EPA seeks comment on the 10 percent per year rate of refracturing for natural gas wells assumed in the impacts analysis found in the TSD. EPA has received anecdotal information suggesting that refracturing could be occurring much less frequently, while others suggest that the percent of wells refractured in a given year could be greater. We seek comment and comprehensive data and information on the rate of refracturing and key factors that influence or determine refracturing frequency.

In addition to well completions, we considered VOC emissions occurring at the wellhead affected facility during subsequent day-to-day operations during well production. As discussed below in section VI.B.1.e, VOC emissions from wellheads are very small during production and account for about 2.6 tons VOC per year. We are not aware of any cost effective controls that can be used to address these relatively small emissions.

b. NSPS for Pneumatic Controllers

Pneumatic controllers are automated instruments used for maintaining a process condition, such as liquid level, pressure, pressure differential and temperature. Pneumatic controllers are widely used in the oil and natural gas sector. In many situations across all segments of the oil and gas industry, pneumatic controllers make use of the available high-pressure natural gas to operate. In these "gas-driven" pneumatic controllers, natural gas may be released with every valve movement or continuously from the valve control pilot. The rate at which this release occurs is referred to as the device bleed rate. Bleed rates are dependent on the design of the device. Similar designs will have similar steady-state rates when operated under similar conditions. Gas-driven pneumatic controllers are typically characterized as "high-bleed" or "low-bleed," where a high-bleed device releases more than 6 standard cubic feet per hour (scfh) of gas, with 18 scfh bleed rate being what we used in our analyses below. There are three basic designs: (1) Continuous bleed devices (high or low-bleed) are used to modulate flow, liquid level or pressure and gas is vented at a steady-state rate; (2) actuating/intermittent devices (high or low-bleed) perform quick control movements and only release gas when they open or close a valve or as they throttle the gas flow; and (3) self-contained devices release gas to a downstream pipeline instead of to the atmosphere. We are not aware of any add-on controls that are or can be used to reduce VOC emissions from gas-driven pneumatic devices.

For an average high-bleed pneumatic controller located in production (where the content of VOC in the raw product stream is relatively high), the difference in VOC emissions between a high-bleed controller and a low-bleed controller is around 1.8 tpy. For the transmission and storage segment (where the content of VOC in the pipeline quality gas is relatively low), the difference in VOC emissions between a high-bleed controller and a low-bleed controller is around 0.89 tpy. We have developed projections that estimate that approximately 13,600 new gas-driven units in the production segment and 67 new gas-driven units in the transmission and storage segment will be installed each year, including replacement of old units. Not all pneumatic controllers are gas driven. These "non-gas driven" pneumatic controllers use sources of power other than pressurized natural gas, such as compressed "instrument air." Because these devices are not gas driven, they do not release natural gas or VOC emissions, but they do have energy impacts because electrical power is required to drive the instrument air compressor system. Electrical service of at least 13.3 kilowatts (kW) is required to power a 10 horsepower (hp) instrument air compressor, which is a relatively small capacity compressor. At sites without available electrical service sufficient to power an instrument air compressor, only gas driven pneumatic devices can be used. During our review, we determined that gas processing plants are the only facilities in the oil and natural gas sector highly likely to have electrical service sufficient to power an instrument air system, and that approximately half of existing gas processing plants are using non-gas driven devices.

For devices at gas processing plants, we evaluated the use of non-gas driven controllers and low-bleed controllers as options for reducing VOC emissions, with high-bleed controllers being the baseline. As mentioned above, non-gas driven devices themselves have zero emissions, but they do have energy impacts because electrical power is required to drive the instrument air compressor system. In our cost analysis, we determined that the annualized cost of installing and operating a fully redundant 10 hp (13.3 kW) instrument air system (systems generally are designed with redundancy to allow for system maintenance and failure without loss of air pressure), including duplicate compressors, air tanks and dryers, would be $11,090. A system of this size is capable of serving 15 control loops and reducing VOC emissions by 4.2 tpy, for a cost effectiveness of $2,659 per ton of VOC reduced. If the savings of the salable natural gas that would have been emitted is considered, the value of the gas not emitted would help offset the cost for this control, bringing the cost per ton of VOC down to $1,824.

We also evaluated the use of low-bleed controllers in place of high-bleed controllers at processing plants. We evaluated the impact of bleeding 6 standard cubic feet of natural gas per hour, which is the maximum bleed rate from low-bleed controllers, according to manufacturers of these devices. We chose natural gas as a surrogate for VOC, because manufacturers' technical specifications for pneumatic controllers are stated in terms of natural gas bleed rate rather than VOC. The capital cost difference between a new high-bleed controller and a new low-bleed controller is estimated to be $165. Without taking into account the savings due to the natural gas losses avoided, the annual costs are estimated to be around $23 per year, which is a cost of $13 per ton of VOC reduced for the production segment. If the savings of the salable natural gas that would have been emitted is considered, there is a net savings of $1,519 per ton of VOC reduced.

Although the non-gas-driven controller system is more expensive than the low-bleed controller system, it is still reasonably cost-effective. Furthermore, the non-gas-driven controller system achieves a 100-percent VOC reduction in contrast to a 66-percent reduction achieved by a low-bleed controller. Moreover, we believe the collateral emissions from electrical power generation needed to run the compressor are very low. Finally, non-gas-driven pneumatic controllers avoid potentially explosive concentrations of natural gas which can occur as a result of normal bleeding from groups of gas-driven pneumatic controllers located in close proximity, as they often are at gas processing plants. Based on our review described above, we believe that a non-gas-driven controller is BSER for reducing VOC emissions from pneumatic devices at gas processing plants. Accordingly, the proposed standard for pneumatic devices at gas processing plants is a zero VOC emission limit.

For the production (other than processing plants) and transmission and storage segments, where electrical service sufficient to power an instrument air system is likely

unavailable and, therefore, only gas-driven devices can be used, we evaluated the use of low-bleed controllers in place of high-bleed controllers. Just as in our analysis of low-bleed controllers as an option for gas processing plants, we evaluated the impact of bleeding 6 standard cubic feet per minute (scfm) of natural gas per hour contrasted with 18 scfm from a high-bleed unit. Again, the capital cost difference between a new high-bleed controller and a new low-bleed controller is estimated to be $165. Without taking into account the savings due to the natural gas losses avoided, the annual costs are estimated to be around $23 per year, which is a cost of $13 per ton of VOC reduced for the production segment. If the savings of the salable natural gas that would have been emitted is considered, there is a net savings for this control. In the transmission and storage segment, where the VOC content of the vented gas is much lower than in the production segment, the cost effectiveness of a low-bleed pneumatic device is estimated to be around $262 per ton of VOC reduced. However, there are no potential offsetting savings to be realized in the transmission and storage segment, since the operators of transmission and storage stations typically do not own the gas they are handling. Based on our evaluation of the emissions and costs, we believe that low-bleed controllers represent BSER for pneumatic controllers in the production (other than processing plants) and transmission and storage segments. Therefore, for pneumatic devices at these locations, we propose a natural gas bleed rate limit of 6.0 scfh to reflect the VOC limit with the use of a low-bleed controller.

There may be situations where high-bleed controllers and the attendant gas bleed rate greater than 6 cubic feet per hour, are necessary due to functional requirements, such as positive actuation or rapid actuation. An example would be controllers used on large emergency shutdown valves on pipelines entering or exiting compression stations. For such situations, we have provided in the proposed rule an exemption where pneumatic controllers meeting the emission standards discussed above would pose a functional limitation due to their actuation response time or other operating characteristics. We are requesting comments on whether there are other situations that should be considered for this exemption. If you provide such comment, please specify the criteria for such situations that would help assure that only appropriate exemptions are claimed.

The proposed standards would apply to installation of a new pneumatic device (including replacing an existing device with a new device). We consider that a pneumatic device, an apparatus, is an affected facility and each installation is construction subject to the proposed NSPS. See definitions of "affected facility" and "construction" at 40 CFR 60.2.

c. NSPS for Compressors

There are many locations throughout the oil and natural gas sector where compression of natural gas is required to move it along the pipeline. This is accomplished by compressors powered by combustion turbines, reciprocating internal combustion engines or electric motors. Turbine-powered compressors use a small portion of the natural gas that they compress to fuel the turbine. The turbine operates a centrifugal compressor, which compresses the natural gas for transit through the pipeline. Sometimes an electric motor is used to turn a centrifugal compressor. This type of compressor does not require the use of any of the natural gas from the pipeline, but it does require a substantial source of electricity. Reciprocating spark ignition engines are also used to power many compressors, referred to as reciprocating compressors, since they compress gas using pistons that are driven by the engine. Like combustion turbines, these engines are fueled by natural gas from the pipeline. Both centrifugal and reciprocating compressors are sources of VOC emissions and were evaluated for coverage under the NSPS.

Centrifugal Compressors. Centrifugal compressors require seals around the rotating shaft to minimize gas leakage and fugitive VOC emissions from where the shaft exits the compressor casing. There are two types of seal systems: Wet seal systems and mechanical dry seal systems.

Wet seal systems use oil, which is circulated under high pressure between three or more rings around the compressor shaft, forming a barrier to minimize compressed gas leakage. Very little gas escapes through the oil barrier, but considerable gas is absorbed by the oil. The amount of gas absorbed and entrained by the oil barrier is affected by the operating pressure of the gas being handled; higher operating pressures result in higher absorption of gas into the oil. Seal oil is purged of the absorbed and entrained gas (using heaters, flash tanks and degassing techniques) and recirculated to the seal area for reuse. Gas that is purged from the seal oil is commonly vented to the atmosphere. Degassing of the seal oil emits an average of 47.7 scfm of gas, depending on the operating pressure of the compressor. An uncontrolled wet seal system can emit, on average, approximately 20.5 tpy of VOC during the venting process (production segment) or about 3.5 tpy (transmission and storage segment). We identified two potential control techniques for reducing emissions from degassing of wet seal systems: (1) Routing the gas back to a low pressure fuel stream to be combusted as fuel gas and (2) routing the gas to a flare. We know only of anecdotal, undocumented information on routing of the gas back to a fuel stream and, therefore, were unable to assess costs and cost effectiveness of the first option. Although we do not have specific examples of routing emissions from wet seal degassing to a flare, we were able to estimate the cost, emission reductions and cost effectiveness of the second option using uncontrolled wet seals as a baseline.

Based on the average uncontrolled emissions of wet seal systems discussed above and a flare efficiency of 95 percent, we determined that VOC emission reductions from a wet seal system would be an average of 19.5 tpy (production segment) or 3.3 tpy (transmission and storage segment). Using an annualized cost of flare installation and operation of $103,373, we estimated the incremental cost effectiveness of this option (from uncontrolled wet seals to controlled wet seals using a flare) to be approximately $5,300/ton and $31,000/ton for the production segment and transmission and storage segment, respectively. With this option, there would be secondary air impacts from combustion. However we did not identify any nonair quality or energy impacts associated with this control technique.

Dry seal systems do not use any circulating seal oil. Dry seals operate mechanically under the opposing force created by hydrodynamic grooves and springs. Fugitive emissions occur from dry seals around the compressor shaft. Based on manufacturer studies and engineering design estimates, fugitive emissions from dry seal systems are approximately 6 scfm of gas, depending on the operating pressure of the compressor. A dry seal system can have fugitive emissions of, on average, approximately 2.6 tpy of VOC (production segment) or about 0.4 tpy (transmission and storage segment). We did not identify any control device suitable to capture and control the fugitive emissions from dry seals around the compressor shaft.

Using uncontrolled wet seals as a baseline, we evaluated the reductions and incremental cost effectiveness of dry seal systems. Based on the average fugitive emissions, we determined that VOC emission reductions achieved by dry seal systems compared to uncontrolled wet seal systems would be 18 tpy (production segment) and 3.1 tpy (transmission and storage segment). Combined with an annualized cost of dry seal systems of $10,678, the incremental cost effectiveness compared to uncontrolled wet seal systems would be $595/ton and $3,495/ton for the production segment and transmission and storage segment, respectively. We identified neither nonair quality nor any energy impacts associated with this option.

In performing our analysis, we estimated the incremental cost of a dry seal compressor over that of an equivalent wet seal compressor to be $75,000. This value was obtained from a vendor who represents a large share of the market for centrifugal compressors. However, this number likely represents a conservatively high value because wet seal units have a significant amount of ancillary equipment, namely the seal oil system and, thus, additional capital expenses. Dry seal systems have some ancillary equipment (the seal gas filtration system), but the costs are less than the wet seal oil system. We were not able to directly confirm this assumption with the vendor, however, a search of product literature showed that seal oil systems and seal gas filtration systems are typically listed separate from the basic compressor package. Using available data on the cost of this equipment, it is very likely that the cost of purchasing a dry seal compressor may actually be lower that a wet seal compressor. We seek comment on available cost data of a dry seal versus wet seal compressor, including all ancillary equipment costs.

In light of the above analyses, we propose to determine that dry seal systems are BSER for reducing VOC emissions from centrifugal compressors. We evaluated the possibility of setting a performance standard that reflects the emission limitation achievable through the use of a dry seal system. However, as mentioned above, VOC from centrifugal compressors with dry seals are fugitive emissions from around the compressor shafts. There is no device to capture and control these fugitive emissions, nor can reliable measurement of these emissions be conducted due to difficulty in accessing the leakage area and danger of contacting the shaft rotating at approximately 30,000 revolutions per minute. This not only poses a likely hazard that would destroy test equipment on contact, it poses a safety hazard to personnel, as well. Therefore, pursuant to section 111(h)(2) of the CAA, we are proposing an equipment standard that would require the use of dry seals to limit the VOC emissions from new centrifugal compressors. We consider that a centrifugal compressor, an apparatus, is an affected facility and each installation is construction subject to the proposed NSPS. See definitions of "affected facility" and "construction" at 40 CFR 60.2. Accordingly, the proposed standard would apply to installation of new centrifugal compressors at new locations, as well as replacement of old compressors.

Although we are proposing to determine dry seal systems to be BSER for centrifugal compressors, we are soliciting comments on the emission reduction potential, cost and any limitations for the option of routing the gas back to a low pressure fuel stream to be combusted as fuel gas. In addition, we solicit comments on whether there are situations or applications where wet seal is the only option, because a dry seal system is infeasible or otherwise inappropriate.

Reciprocating Compressors. Reciprocating compressors in the natural gas industry leak natural gas fugitive VOC during normal operation. The highest volumes of gas loss and fugitive VOC emissions are associated with piston rod packing systems. Packing systems are used to maintain a tight seal around the piston rod, preventing the high pressure gas in the compressor cylinder from leaking, while allowing the rod to move freely. This leakage rate is dependent on a variety of factors, including physical size of the compressor piston rod, operating speed and operating pressure. Under the best conditions, new packing systems properly installed on a smooth, well-aligned shaft can be expected to leak a minimum of 11.5 scfh. Higher leak rates are a consequence of fit, alignment of the packing parts and wear.

We evaluated the possibility of reducing VOC emissions from reciprocal compressors through a control device. However, VOC from reciprocating compressors are fugitive emissions from around the compressor shafts. Although it is possible to construct an enclosure around the rod packing area and vent the emissions outside for safety purposes, connection to a closed vent system and control device would create back pressure on the leaking gas. This back pressure would cause the leaked gas instead to be forced inside the crankcase of the engine, which would dilute lubricating oil, causing premature failure of engine bearings, pose an explosion hazard and eventually be vented from the crankcase breather, defeating the purpose of a control device.

As mentioned above, as packing wears and deteriorates, leak rates can increase. We, therefore, evaluate replacement of compressor rod packing systems as an option for reducing VOC emissions. Conventional bronze-metallic packing rings wear out and need to be replaced every 3 to 5 years, depending on the compressor's rate of usage (*i.e.,* the percentage of time that a compressor is in pressurized mode).

Based on industry experience in the Natural Gas STAR program and other sources, we evaluated the rod packing replacement costs for reciprocating compressors at different segments of this industry. Usage rates vary by segment. Usage rates for compressors at wellheads, gathering/boosting stations, processing plants, transmission stations and storage facilities are 100, 79, 90, 79 and 68 percent, respectively. Reciprocating compressors at wellheads are small and operate at lower pressures, which limit VOC emissions from these sources. Due to the low VOC emissions from these compressors, about 0.044 tpy, combined with an annual cost of approximately $3,700, the cost per ton of VOC reduction is rather high. We estimated that the cost effectiveness of controlling wellhead compressors is over $84,000 per ton of VOC reduced, which we believe to be too high and, therefore, not reasonable. Because the cost effectiveness of replacing packing wellhead compressor rod systems is not reasonable, and absent other emission reduction measures, we did not find a BSER for reducing VOC emissions from reciprocal compressors at wellheads.

For reciprocating compressors located at other oil and gas operations, we estimated that the cost effectiveness of controlling compressor VOC emissions by rod packing replacement would be $870 per ton of VOC for reciprocating compressors at gathering and boosting stations, $270 per ton of VOC for reciprocating compressors at processing stations, $2,800 per ton of VOC for reciprocating compressors at transmission stations and $3,700 per ton of VOC for reciprocating compressors at underground storage facilities. We consider these costs to be reasonable. We did not identify any nonair quality health or environmental impacts or energy impacts associated with rod packing replacement. In light of the above, we propose to determine that such control is the BSER for reducing

VOC emission from compressors at these other oil and gas operations.

Because VOC emitted from reciprocal compressors are fugitive emissions, there is no device to capture and control the emissions. Therefore, pursuant to section 111(h) of the CAA, we are proposing an operational standard. Based on industry experience reported to the Natural Gas STAR program, we determined that packing rods should be replaced every 3 years of operation. However, to account for segments of the industry in which reciprocating compressors operate in pressurized mode a fraction of the calendar year (ranging from approximately 68 percent up to approximately 90 percent), the proposed rule expresses the replacement requirement in terms of hours of operation rather than on a calendar year basis. One year of continuous operation would be 8,760 hours. Three years of continuous operation would be 26,280 hours, or rounded to the nearest thousand, 26,000 hours. Accordingly, the proposed rule would require the replacement of the rod packing every 26,000 hours of operation. The owner or operator would be required to monitor the hours of operation beginning with the installation of the reciprocating compressor affected facility. Cumulative hours of operation would be reported each year in the facility's annual report. Once the hours of operation reached 26,000 hours, the owner or operator would be required to change the rod packing immediately, although unexpected shutdowns could be avoided by tracking hours of operation and planning for packing replacement at scheduled maintenance shutdowns before the hours of operation reached 26,000.

Some industry partners of the Natural Gas STAR program currently conduct periodic testing to determine the leakage rates that would identify economically beneficial replacement of rod packing based on natural gas savings. Therefore, we are soliciting comments on incorporating a method similar to that in the Natural Gas STAR's Lessons Learned document entitled, *Reducing Methane Emissions from Compressor Rod Packing Systems* (*http://www.epa.gov/gasstar/documents/ll_rodpack.pdf*), to be incorporated in the NSPS. We are soliciting comments on how to determine a suitable leak threshold above which rod packing replacement would be cost effective for VOC emission reduction. We are also soliciting comment on the appropriate replacement frequency and other considerations that would be associated with regular replacement periods.

d. NSPS for Storage Vessels

Crude oil, condensate and produced water are typically stored in fixed-roof storage vessels. Some vessels used for storing produced water may be open-top tanks. These vessels, which are operated at or near atmospheric pressure conditions, are typically located as part of a tank battery. A tank battery refers to the collection of process equipment used to separate, treat and store crude oil, condensate, natural gas and produced water. The extracted products from productions wells enter the tank battery through the production header, which may collect product from many wells.

Emissions from storage vessels are a result of working, breathing and flash losses. Working losses occur due to the emptying and filling of storage tanks. Breathing losses are the release of gas associated with daily temperature fluctuations and other equilibrium effects. Flash losses occur when a liquid with dissolved gases is transferred from a vessel with higher pressure to a vessel with lower pressure, thus, allowing dissolved gases and a portion of the liquid to vaporize or flash. In the oil and natural gas production segment, flashing losses occur when live crude oils or condensates flow into a storage tank from a processing vessel operated at a higher pressure. Typically, the larger the pressure drop, the more flash emissions will occur in the storage stage. Temperature of the liquid also influences the amount of flash emissions. The amount of liquid entering the tank during a given time, commonly known as throughput, also affects the emission rate, with higher throughput tanks having higher annual emissions, given that other parameters are the same.

In analyzing controls for storage vessels, we reviewed control techniques identified in the Natural Gas STAR program and state regulations. We identified two ways of controlling storage vessel emissions, both of which can reduce VOC emissions by 95 percent. One option would be to install a vapor recovery unit (VRU) and recover all the vapors from the tanks. The other option would be to route the emissions from the tanks to a flare control device. These devices could be "candlestick" flares that are found at gas processing plants or other larger facilities or enclosed combustors which are commonly found at smaller field facilities. We estimated the total annual cost for a VRU to be approximately $18,900/yr and for a flare to be approximately $8,900/yr. Cost effectiveness of these control options depend on the amount of vapor produced by the storage vessels being controlled. A VRU has a potential advantage over flaring, in that it recovers hydrocarbon vapors that potentially can be used as supplemental burner fuel, or the vapors can be condensed and collected as condensate that can be sold. If natural gas is recovered, it can be sold, as well, as long as a gathering line is available to convey the recovered salable gas product to market or to further processing. A VRU also does not have secondary air impacts that flaring does, as described below. However, a VRU cannot be used in all instances. Some conditions that affect the feasibility of VRU are: Availability of electrical service sufficient to power the VRU; fluctuations in vapor loading caused by surges in throughput and flash emissions from the tank; potential for drawing air into condensate tanks causing an explosion hazard; and lack of appropriate destination or use for the vapor recovered.

Like a VRU, a flare control device can also achieve a control efficiency of 95 percent. There are no technical limitations on the use of flares to control vapors from condensate and crude oil tanks. However, flaring has a secondary impact from emissions of NO_X and other pollutants. In light of the technical limitations with the use of a VRU, we are unable to conclude that a VRU is better than flaring. We, therefore, propose to determine that both a VRU and flare are BSER for reducing VOC emission from storage vessels. We propose an NSPS of 95-percent reduction for storage vessels to reflect the level of emission reduction achievable by VRU and flares.

VOC emissions from storage vessels vary significantly, depending on the rate of liquid entering and passing through the vessel (*i.e.*, its throughput), the pressure of the liquid as it enters the atmospheric pressure storage vessel, the liquid's volatility and temperature of the liquid. Some storage vessels have negligible emissions, such as those with very little throughput and/or handling heavy liquids entering at atmospheric pressure. We do not believe that it is cost effective to control these vessels. We believe it is important to control tanks with significant VOC emissions under the proposed NSPS.

In our analysis, we evaluated storage tanks with varying condensate or crude oil throughput. We used emission factors developed for the Texas Environmental Research Consortium in a study that evaluated VOC emissions from crude oil and condensate storage tanks by performing direct

measurements. The study found that the average VOC emission factor for crude oil storage tanks was 1.6 pounds (lb) VOC per barrel of crude oil throughput. The average VOC emission factor for condensate tanks was determined to be 33.3 lb VOC per barrel of condensate throughput. Applying these emission factors and evaluating condensate throughput rates of 0.5, 1, 2 and 5 barrels per day (bpd), we determined that VOC emissions at these condensate throughput rates would be approximately 3, 6, 12 and 30 tpy, respectively. Similarly, we evaluated crude oil throughput rates of 1, 5, 20 and 50 bpd. Based on the Texas study, these crude oil throughput rates would result in VOC emissions of 0.3, 1.5, 5.8 and 14.6 tpy, respectively. We believe that it is important to control tanks with significant VOC emissions. Furthermore, we believe it would be easier and less costly for owners and operators to determine applicability by using a throughput threshold instead of an emissions threshold. As a result of the above analyses, we believe that storage vessels with at least 1 bpd of condensate or 20 bpd of crude oil should be controlled. These throughput rates are equivalent to VOC emissions of approximately 6 tpy. Based on an estimated annual cost of $18,900 for the control device, controlling storage vessels with these condensate or crude oil throughputs would result in a cost effectiveness of $3,150 per ton of VOC reduced.

Based on our evaluation, we propose to determine that both a VRU and flare are BSER for reducing VOC emission from storage vessels with throughput of at least 1 barrel of condensate per day or 20 barrels of crude oil per day. We propose an NSPS of 95-percent reduction for these storage vessels to reflect the level of emission reduction achievable by VRU and flare control devices.

For storage vessels below the throughput levels described above ("small throughput tanks"), for which we do not consider flares or VRU to be cost effective controls, we evaluated other measures to reduce VOC emissions. Standard practices for such tanks include requiring a cover that is well designed, maintained in good condition and kept closed. Crude oil and condensate storage tanks in the oil and natural gas sector are designed to operate at or just slightly above or below atmospheric pressure. Accordingly, they are provided with vents to prevent tank destruction under rapid pressure increases due to flash emissions conditions. Studies by the Natural Gas STAR program and by others have shown that working losses (*i.e.*, those emissions absent flash emission conditions) are very low, approaching zero. During times of flash emissions, tanks are designed such that the flash emissions are released through a vent on the fixed roof of the tank when pressure reaches just a few ounces to prevent pressure buildup and resulting tank damage. At those times, vapor readily escapes through the vent to protect the tank. Tests have shown that open hatches or leaking hatch gaskets have little effect on emissions from uncontrolled tanks due to the functioning roof vent. However, in the case of controlled tanks, the control requirements include provisions for maintaining integrity of the closed vent system that conveys emissions to the control device, including hatches and other tank openings. As a result, hatches are required to be kept closed and gaskets kept in good repair to meet control requirements of controlled storage vessels. Because the measures we evaluated, including maintenance of hatch integrity, do not provide appreciable emission reductions for storage vessels with throughputs under 1 barrel of condensate per day and 21 barrels of crude oil per day, we believe that the control options we evaluated do not reflect BSER for the small throughput tanks and we are not proposing standards for these tanks.

As discussed in section VII of this preamble, we are proposing to amend the NESHAP for oil and natural gas production facilities at 40 CFR part 63, subpart HH to require that all storage vessels at production facilities reduce HAP emissions by 95 percent. Because the controls used to achieve the 95-percent HAP reduction are the same as the proposed BSER for VOC reduction for storage vessels (*i.e.*, VRU and flare), sources that are achieving the 95-percent HAP reduction would also be meeting the proposed NSPS of 95-percent VOC reduction. In light of the above, and to avoid duplicate monitoring, recordkeeping and reporting, we propose that storage vessels subject to the requirements of subpart HH are exempt from the proposed NSPS for storage vessel in 40 CFR part 60, subpart OOOO.

e. NSPS for VOC Equipment Leaks

Equipment leaks are fugitive emissions emanating from valves, pump seals, flanges, compressor seals, pressure relief valves, open-ended lines and other process and operation components. There are several potential reasons for equipment leak emissions. Components such as pumps, valves, pressure relief valves, flanges, agitators and compressors are potential sources that can leak due to seal failure. Other sources, such as open-ended lines and sampling connections may leak for reasons other than faulty seals. In addition, corrosion of welded connections, flanges, and valves may also be a cause of equipment leak emissions. Because of the large number of valves, pumps and other components within an oil and gas production, processing and transmission facility, equipment leak volatile emissions from these components can be significant. Natural gas processing plants, especially those using refrigerated absorption and transmission stations tend to have a large number of components. Equipment leaks from processing plants are addressed in our review of 40 CFR part 60, subpart KKK, which is discussed above in section VI.B.1.

In addition to gas processing plants, these types of equipment also exist at oil and gas production sites and gas transmission and storage facilities. While the number of components at individual transmission and storage facilities is relatively smaller than at processing plants, collectively, there are many components that can result in significant emissions.

Therefore, we evaluated applying NSPS for equipment leaks to facilities in the production segment of the industry, which includes everything from the wellhead to the point that the gas enters the processing plant, transmission pipeline or distribution pipeline. Production facilities can vary significantly in the operations performed and the processes, all of which impact the number of components and potential emissions from leaking equipment and, thus, impact the annual costs related to implementing a LDAR program. We used data collected by the Gas Research Institute to develop model production facilities. Baseline emissions, along with emission reductions and costs of regulatory alternatives, were estimated using these model production facilities. We considered production facilities where separation, storage, compression and other processes occur. These facilities may not have a wellhead on-site, but would be associated with a wellhead. We also evaluated gathering and boosting facilities, where gas and/or oil are collected from a number of wells, then processed and transported downstream to processing plants or transmission stations. We evaluated the impacts at these production facilities with varying number of operations and equipment. We also developed a model plant for the transmission and storage segment using data from the Gas

Research Institute. Details of these evaluations may be found in the TSD in the docket.

For an average production site at or associated with a wellhead, we estimated annual VOC emissions from equipment leaks of around 2.6 tpy. For an average gathering/boosting facility, we estimated the annual VOC emissions from equipment leaks to be around 9.8 tpy. The average transmission and storage facility emits 2.7 tpy of VOC.

For facilities in each non-gas processing plant segment, we evaluated the same four options as we did for gas processing plants in section VI.B.1 above. These four options are as follows: (1) 40 CFR part 60, subpart VVa-level LDAR (which is based on conducting Method 21 monthly, defining "leak" at 500 ppm threshold, and adding connectors to the VV list of components to be monitored); (2) monthly optical gas imaging with annual Method 21 check (the alternative work practice for monitoring equipment for leaks at 40 CFR 60.18(g)); (3) monthly optical gas imaging alone; and (4) annual optical gas imaging alone.

For option 1, we evaluated subpart VVa-LDAR as a whole. We also analyzed separately the individual types of components (valves, connectors, pressure relief devices and open-ended lines). Detailed discussions of these component by component analyses are included in the TSD in the docket.

Based on our evaluation, subpart VVa-level LDAR (Option 1) results in more VOC reduction than the subpart VV-level LDAR currently required for gas processing plants, because more leaks are found based on the lower definition of "leak" under subpart VVa (10,000 ppm for subpart VV and 500 ppm for subpart VVa). In addition, our evaluation shows that the cost per ton of VOC reduced for subpart VVa level controls is less than the cost per ton of VOC reduced for the less stringent subpart VV level of control. Although the cost of repairing more leaks is higher, the increased VOC control afforded by subpart VVa level controls more than offsets the increased costs.

For the subpart VVa level of control at the average production site associated with a wellhead, average facility-wide cost-effectiveness would be $16,084 per ton of VOC. Component-specific cost-effectiveness ranged from $15,063 per ton of VOC (for valves) to $211,992 per ton of VOC (for pressure relief devices), with connectors and open-ended lines being $74,283 and $180,537 per ton of VOC, respectively. We also looked at component costs for a modified subpart VVa level of control with less frequent monitoring for valves and connectors at production sites associated with a wellhead.[12] The cost-effectiveness for valves was calculated to be $17,828 per ton of VOC by reducing the monitoring frequency from monthly to annually. The cost-effectiveness for connectors was calculated to be $87,277 per ton of VOC by reducing the monitoring frequency from every 4 years to every 8 years after the initial compliance period.

We performed a similar facility-wide and component-specific analysis of option 1 LDAR for gathering and boosting stations. For the subpart VVa level of control at the average gathering and boosting station, facility-wide cost-effectiveness was estimated to be $9,344 per ton of VOC. Component-specific cost-effectiveness ranged from $6,079 per ton of VOC (for valves) to $77,310 per ton of VOC (for open-ended lines), with connectors and pressure relief devices being $23,603 and $72,523 per ton, respectively. For the modified subpart VVa level of control at gathering and boosting stations, cost-effectiveness ranged from $5,221 per ton of VOC (for valves) to $77,310 per ton of VOC (for open-ended lines), with connectors and pressure relief devices being $27,274 and $72,523 per ton, respectively. The modified subpart VVa level controls were more cost-effective than the subpart VVa level controls for valves, but not for connectors. This is due to the low cost of monitoring connectors and the low VOC emissions from leaking connectors.

We also performed a similar analysis of option 1 subpart VVa-level LDAR for gas transmission and storage facilities. For the subpart VVa level of control at the average transmission and storage facility, facility-wide cost-effectiveness was $20,215. Component-specific cost-effectiveness ranged from $24,762 per ton of VOC (for open-ended lines) to $243,525 per ton of VOC (for pressure relief devices), with connectors and valves being $36,527 and $43,111 per ton of VOC, respectively. For the modified subpart VVa level of control at transmission and storage facilities, cost-effectiveness ranged from $24,762 per ton of VOC (for open-ended lines) to $243,525 per ton of VOC (for pressure relief devices), with connectors and valves being $42,140 and $40,593 per ton of VOC, respectively. Again, the modified subpart VVa level controls were more cost-effective for valves and less cost effective for connectors than the subpart VVa level controls. This is due to the low cost of monitoring connectors and the low VOC emissions from leaking connectors.

For each of the non-gas processing segments, we also evaluated monthly optical gas imaging with annual Method 21 check (Option 2). As discussed in secton VI.B.1, we had previously determined that the VOC reductions achieved under this option would be the same as for option 1 subpart VVa-level LDAR. In our evaluation of Option 2, we estimated that a single optical imaging instrument could be used for 160 well sites and 13 gathering and boosting stations, which means that the cost of the purchase or rental of the camera would be spread across 173 facilities.

For production sites, gathering and boosting stations, and transmission and storage facilities, we estimated that option 2 monthly optical gas imaging with annual Method 21 check would have cost-effectiveness of $16,123, $10,095, and $19,715 per ton of VOC, respectively.[13]

The annual costs for option 1 and option 2 leak detection and repair programs for production sites associated with a wellhead, gathering and boosting stations and transmission and storage facilities were higher than those estimated for natural gas processing plants because natural gas processing plant annual costs are based on the incremental cost of implementing subpart VVa-level standards, whereas the other facilities are not currently regulated under an LDAR program. The currently unregulated sites would be required to set up a new LDAR program; perform initial monitoring, tagging, logging and repairing of components; as well as planning and training personnel to implement the new LDAR program.

In addition to options 1 and 2, we evaluated a third option that consisted of monthly optical gas imaging without an annual Method 21 check. Because we were unable to estimate the VOC emissions achieved by an optical imaging program alone, we were unable to estimate the cost-effectiveness of this option. However, we estimated the annual cost of the monthly optical gas imaging LDAR program at production sites, gathering and boosting stations, and transmission and storage facilities to be $37,049, $86,135, and $45,080, respectively, based on camera purchase, or $32,693, $81,780, and $40,629, respectively, based on camera rental.

Finally, we evaluated a fourth option similar to the third option except that the optical gas imaging would be performed annually rather than monthly. For this option, we estimated the annual cost for production sites, gathering and boosting stations, and transmission and storage facilities to be

[13] Because optical gas imaging is used to view several pieces of equipment at a facility at once to survey for leaks, options involving imaging are not amenable to a component by component analysis.

$30,740, $64,416, and $24,031, respectively, based on camera purchase, or $26,341, $60,017, and $19,493, respectively, based on camera rental.

We request comment on the applicability of a leak detection and repair program based solely on the use of optical imaging or other technologies. Of most use to us would be information on the effectiveness of advanced measurement technologies to detect and repair small leaks on the same order or smaller as specified in the VVa equipment leak requirements and the effects of increased frequency of and associated leak detection, recording, and repair practices.

Based on the evaluation described above, we believe that neither option 1 nor option 2 is cost effective for reducing fugitive VOC emissions from equipment leaks at sites, gathering and boosting stations, and transmission and storage facilities. For options 3 and 4, we were unable to estimate their cost effectiveness and, therefore, could not identify either of these two options as BSER for addressing equipment leak of VOC at production facilities associated with wellheads, at gathering and boosting stations or at gas transmission and storage facilities. We are, therefore, not proposing NSPS for addressing VOC emissions from equipment leaks at these facilities.

5. What are the SSM provisions?

The EPA is proposing standards in this rule that apply at all times, including during periods of startup or shutdown, and periods of malfunction. In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods.

The General Provisions in 40 CFR part 60 require facilities to keep records of the occurrence and duration of any startup, shutdown or malfunction (40 CFR 60.7(b)) and either report to the EPA any period of excess emissions that occurs during periods of SSM (40 CFR 60.7(c)(2)) or report that no excess emissions occurred (40 CFR 60.7(c)(4)). Thus, any comments that contend that sources cannot meet the proposed standard during startup and shutdown periods should provide data and other specifics supporting their claim.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 60.2.) The EPA has determined that malfunctions should not be viewed as a distinct operating mode and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 111 standards. Further, nothing in CAA section 111 or in case law requires that the EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. See, *Weyerhaeuser* v *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."), and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 111 standards.

Further, it is reasonable to interpret CAA section 111 as not requiring the EPA to account for malfunctions in setting emissions standards. For example, we note that CAA section 111 provides that the EPA set standards of performance which reflect the degree of emission limitation achievable through "the application of the best system of emission reduction" that the EPA determines is adequately demonstrated. Applying the concept of "the application of the best system of emission reduction" to periods during which a source is malfunctioning presents difficulties. The "application of the best system of emission reduction" is more appropriately understood to include operating units in such a way as to avoid malfunctions.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take malfunctions into account in setting CAA section 111 standards for affected facilities under 40 CFR part 60, subpart OOOO. As noted above, by definition, malfunctions are sudden and unexpected events and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in the category. Moreover, malfunctions can vary in frequency, degree and duration, further complicating standard setting.

In the event that a source fails to comply with the applicable CAA section 111 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 111 standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 60.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail. Such failure can sometimes cause an exceedance of the relevant emission standard (See, *e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (September 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (February 15, 1983)). The EPA is, therefore, proposing to add an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 60.41Da (defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 60.46Da. (See 40 CFR 22.24). These criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 60.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions "[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *" The criteria also are designed to ensure that steps are taken to correct the

malfunction, to minimize emissions in accordance with 40 CFR 60.40Da and to prevent future malfunctions. For example, the source would have to prove by a preponderance of the evidence that "[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *" and that "[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *" In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met the burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with CAA section 113 (see also 40 CFR part 22.77).

VII. Rationale for Proposed Action for NESHAP

A. What data were used for the NESHAP analyses?

To perform the technology review and residual risk analysis for the two NESHAP, we created a comprehensive dataset (*i.e.*, the MACT dataset). This dataset was based on the EPA's 2005 National Emissions Inventory (NEI). The NEI database contains information about sources that emit criteria air pollutants and their precursors and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint and mobile sources in the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. The EPA collects information about sources and releases an updated version of the NEI database every 3 years.

The NEI database is compiled from these primary sources:

- Emissions inventories compiled by state and local environmental agencies
- Databases related to the EPA's MACT programs
- Toxics Release Inventory data
- For electric generating units, the EPA's Emission Tracking System/CEM data and United States Department of Energy (DOE) fuel use data
- For onroad sources, the United States Federal Highway Administration's estimate of vehicle miles traveled and emission factors from the EPA's MOBILE computer model
- For nonroad sources, the EPA's NONROAD computer model
- Emissions inventories from previous years, if states do not submit current data

To concentrate on only records pertaining to the oil and natural gas industry sector, data were extracted using two criteria. First, we specified that all facilities containing codes identifying the Oil and Natural Gas Production and the Natural Gas Transmission and Storage MACT source categories (MACT codes 0501 and 0504, respectively). Second, we extracted facilities identified with the following NAICS codes: 211 * * * (Oil and Gas Extraction), 221210 (Natural Gas Distribution), 4861 * * * (Pipeline Transportation of Crude Oil), and 4862 * * * (Pipeline Transportation of Natural Gas). Once the data were extracted, we reviewed the Source Classification Codes (SCC) to assess whether there were any records included in the dataset that were clearly not a part of the oil and natural gas sector. Our review of the SCC also included assigning each SCC to an "Emission Process Group" that represents emission point types within the oil and natural gas sector.

Since these MACT standards only apply to major sources, only facilities designated as major sources in the NEI were extracted. In the NEI, sources are identified as major if the facility-wide emissions are greater than 10 tpy for any single HAP or 25 tpy for any combination of HAP. We believe that this may overestimate the number of major sources in the oil and natural gas sector because it does not take into account the limitations set forth in the CAA regarding aggregation of emissions from wells and associated equipment in determining major source status.

The final dataset contained a total of 1,311 major sources in the oil and natural gas sector; 990 in Oil and Natural Gas Production, and 321 in Natural Gas Transmission and Storage. To assess how representative this number of facilities was, we obtained information on the number of subject facilities for both MACT standards from the Enforcement and Compliance History Online (ECHO) database. The ECHO database is a web-based tool (*http://www.epa-echo.gov/echo/index.html*) that provides public access to compliance and enforcement information for approximately 800,000 EPA-regulated facilities. The ECHO database allows users to find permit, inspection, violation, enforcement action and penalty information covering the past 3 years. The site includes facilities regulated as CAA stationary sources, as well as Clean Water Act direct dischargers, and Resource Conservation and Recovery Act hazardous waste generators/handlers. The data in the ECHO database are updated monthly.

We performed a query on the ECHO database requesting records for major sources, with NAICS codes 211*, 221210, 4861* and 4862*, with information for MACT. The ECHO database query identified records for a total of 555 facilities, 269 in the Oil and Natural Gas Production source category (NAICS 211* and 221210) and 286 in the Natural Gas Transmission and Storage source category (NAICS 4861* and 4862*). This comparison leads us to conclude that, for the Natural Gas Transmission and Storage segment, the NEI database is representative of the number of sources subject to the rule. For the Oil and Natural Gas Production source category, it confirms our assumption that the NEI dataset contains more facilities than are subject to the rule. However, this provides a conservative overestimate of the number of sources, which we believe is appropriate for our risk analyses.

We are requesting that the public provide a detailed review of the information in this dataset and provide comments and updated information where appropriate. Section X of this preamble provides an explanation of how to provide updated information for these datasets.

B. What are the proposed decisions regarding certain unregulated emissions sources?

In addition to actions relative to the technology review and risk reviews discussed below, we are proposing, pursuant to CAA sections 112(d)(2) and (3), MACT standards for glycol dehydrators and storage vessels for which standards were not previously developed. We are also proposing changes that affect the definition of "associated equipment" which could apply these MACT standards to previously unregulated sources.

1. Glycol Dehydrators

Once natural gas has been separated from any liquid materials or products (*e.g.*, crude oil, condensate or produced water), residual entrained water is removed from the natural gas by dehydration. Dehydration is necessary because water vapor may form hydrates, which are ice-like structures, and can cause corrosion in or plug equipment lines. The most widely used natural gas dehydration processes are glycol dehydration and solid desiccant dehydration. Solid desiccant dehydration, which is typically only used for lower throughputs, uses adsorption to remove water and is not a source of HAP emissions.

Glycol dehydration is an absorption process in which a liquid absorbent, glycol, directly contacts the natural gas stream and absorbs any entrained water vapor in a contact tower or absorption column. The majority of glycol dehydration units use triethylene glycol as the absorbent, but ethylene glycol and diethylene glycol are also used. The rich glycol, which has absorbed water vapor from the natural gas stream, leaves the bottom of the absorption column and is directed either to (1) a gas condensate glycol (GCG) separator (flash tank) and then a reboiler or (2) directly to a reboiler where the water is boiled off of the rich glycol. The regenerated glycol (lean glycol) is circulated, by pump, into the absorption tower. The vapor generated in the reboiler is directed to the reboiler vent.

The reboiler vent is a source of HAP emissions. In the glycol contact tower, glycol not only absorbs water, but also absorbs selected hydrocarbons, including BTEX and n-hexane. The hydrocarbons are boiled off along with the water in the reboiler and vented to the atmosphere or to a control device. The most commonly used control device is a condenser. Condensers not only reduce emissions, but also recover condensable hydrocarbon vapors that can be recovered and sold. In addition, the dry non-condensable off-gas from the condenser may be used as fuel or recycled into the production process or directed to a flare, incinerator or other combustion device.

If present, the GCG separator (flash tank) is also a potential source of HAP emissions. Some glycol dehydration units use flash tanks prior to the reboiler to separate entrained gases, primarily methane and ethane from the glycol. The flash tank off-gases are typically recovered as fuel or recycled to the natural gas production header. However, the flash tank may also be vented directly to the atmosphere. Flash tanks typically enhance the reboiler condenser's emission reduction efficiency by reducing the concentration of non-condensable gases present in the stream prior to being introduced into the condenser.

In the development of the MACT standards for the two oil and natural gas source categories, the EPA created two subcategories of glycol dehydrators based on actual annual average natural gas flowrate and actual average benzene emissions. Under 40 CFR part 63, subpart HH, (the Oil and Natural Gas Production NESHAP), the EPA established MACT standards for glycol dehydration units with an actual annual average natural gas flowrate greater than or equal to 85,000 scmd and actual average benzene emissions greater than or equal to 0.90 Mg/yr (40 CFR 63.765(a)). The EPA did not establish standards for the other subcategory, which consists of glycol dehydration units that are below the flowrate and emission thresholds specified in subpart HH. Similarly, under 40 CFR part 63, subpart HHH (the Natural Gas Transmission and Storage NESHAP), the EPA established MACT standards for the subcategory of glycol dehydration units with an actual annual average natural gas flowrate greater than or equal to 283,000 scmd and actual average benzene emissions greater than or equal to 0.90 Mg/yr, but did not establish standards for the other subcategory, which consists of glycol dehydration units that are below the flowrate and emission thresholds specified in subpart HHH. As mentioned above, we refer to these unregulated dehydration units in both subparts HH and HHH as "small dehydrators" in this proposed rule.

The EPA is proposing emission standards for these subcategories of small dehydrators (*i.e.*, those dehydrators with an actual annual average natural gas flowrate less than 85,000 scmd at production sites or 283,000 scmd at natural gas transmission and storage sites, or actual average benzene emissions less than 0.9 Mg/yr). Because we do not have any new emissions data concerning these emission points, we evaluated the dataset collected from industry during the development of the original MACT standards (legacy docket A–94–04, item II–B–01, disk 1 for oil and natural gas production facilities; and items IV–G–24, 26, 27, 30 and 31 for natural gas transmission and storage facilities). We believe this dataset is representative of currently operating glycol dehydrators because it contains information for a varied group of sources (*i.e.*, units owned by different companies, located in different states, representing a range of gas compositions and emission controls) and that the processes have not changed significantly since the data were collected.

In the Oil and Natural Gas Production source category, there were 91 glycol dehydration units with throughput and emissions data identified that would be classified as small glycol dehydration units. We evaluated the possibility of establishing a MACT floor as a Mg/yr limit. However, due to variability of gas throughput and inlet gas composition, we could not properly identify the best performing units by only considering emissions. To allow us to normalize the emissions for a more accurate determination of the best performing sources, we created an emission factor in terms of grams BTEX/scm-ppmv for each facility. The emission factor reflects the facility's emission level, taking into consideration its natural gas throughput and inlet natural gas BTEX concentration. To determine the MACT floor for the existing dehydrators, we ranked each unit from lowest to highest, based on their emission factor, to determine the facilities in the top 12 percent of the dataset. The MACT floor was an emission factor of 1.10×10^{-4} grams BTEX/scm-ppmv. To meet this level of emissions, we anticipate that sources will use a variety of options, including, but not limited to, routing emissions to a condenser or to a combustion device.

We also considered beyond-the-floor options for the existing sources, as required by section 112(d)(2) of the CAA. To achieve further reductions beyond the MACT floor level of control, sources would have to install an additional add-on control device, most likely a combustion device. Assuming the MACT floor control device is a combustion device, which generally achieves at least a 95-percent HAP reduction, then less than 5 percent of the initial HAP emissions remain. Installing a second device would involve the same costs as the first control, but would only achieve 1/20 of the reduction (*i.e.*, reducing the remaining 5 percent by another 95 percent represents a 4.49-percent reduction of the initial, uncontrolled emissions, which is 1/20 of the 95-percent reduction achieved with the first control). Based on the $8,360/Mg cost effectiveness of the floor level of control, we estimate that the incremental cost effectiveness of the second control to be $167,200/Mg. We do not believe this cost to be reasonable given the level of emission reduction. We are, therefore, proposing an emission standard for existing small dehydrators that reflects the MACT floor.

For new small glycol dehydrators in the Oil and Natural Gas Production source category, based on our performance ranking, the best performing source has an emission factor of 4.66×10^{-6} grams BTEX/scm-ppmv. To meet this level of emissions, we anticipate that sources will use a variety of options, including, but not limited to, routing emissions to a condenser or to a combustion device. The consideration of beyond-the-floor options for new small dehydrators would be the same as for existing small dehydrators, and, as stated above, we do not believe a cost of $167,200/Mg to be reasonable given the level of emission

reduction. We are, therefore, proposing a MACT standard for new small dehydrators that reflects the MACT floor level of control.

Under our proposal, a small dehydrator's actual MACT emission limit would be determined by multiplying the MACT floor emission factor in g BTEX/scm-ppmv by its unit-specific incoming natural gas throughput and BTEX concentration for the dehydrator. A formula is provided in 40 CFR 63.765(b)(1)(iii) to calculate the MACT limit as an annual value.

In the Natural Gas Transmission and Storage source category, there were 16 facilities for which throughput and emissions data were available that would be classified as small glycol dehydration units. Since the number of units was less than 30, the MACT floor for existing sources was based on the top five performing units. Using the same emission factor concept, we determined that the MACT floor for existing sources is an emission factor equal to 6.42×10^{-5} grams BTEX/scm-ppmv. To meet this level of emissions, we anticipate that sources will use a variety of options, including, but not limited to, routing emissions to a condenser or to a combustion device.

We also considered beyond-the-floor options for the existing small dehydrators as required by section 112(d)(2) of the CAA. To achieve further reductions beyond the MACT floor level of control, sources would have to install an additional add-on control device, most likely a combustion device. Assuming the MACT floor control device is a combustion device, which generally achieves at least a 95-percent HAP reduction, then less than 5 percent of the initial HAP emissions remain. Installing a second device would involve the same costs as the first control device, but would only achieve 1/20 of the reduction (*i.e.*, reducing the remaining 5 percent by another 95 percent represents a 4.49-percent reduction of the initial, uncontrolled emissions, which is 1/20 of the 95-percent reduction achieved with the first control). Based on the $1,650/Mg cost effectiveness of the floor level of control, we estimate that the incremental cost effectiveness of the second control to be $33,000/Mg. We do not believe this cost to be reasonable given the level of emission reduction. We are, therefore, proposing an emission standard for existing small dehydrators that reflects the MACT floor.

For new small glycol dehydrators, based on our performance ranking, the best performing source has an emission factor of 1.10×10^{-5} grams BTEX/scm-ppmv. To meet this level of emissions, we anticipate that sources will use a variety of options, including, but not limited to, routing emissions to a condenser or to a combustion device. The consideration of beyond-the-floor options for new small dehydrators would be the same as for existing small dehydrators, and, as stated above, we do not believe a cost of $33,000/Mg to be reasonable given the level of emission reduction. We are, therefore, proposing an emission standard for new sources that reflects the MACT floor level of control.

Under our proposal, a source's actual MACT emissions limit would be determined by multiplying this emission factor by their unit-specific incoming natural gas throughput and BTEX concentration for the dehydrator. A formula is provided in 40 CFR 63.1275(b)(1)(iii) to calculate the limit as an annual value.

As discussed below, we are proposing that, with the removal of the 1-ton alternative compliance option from the existing standards for glycol dehydrators, the MACT for these two source categories would provide an ample margin of safety to protect public health. We, therefore, maintain that, after the implementation of the small dehydrator standards discussed above, these MACT will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for these two source categories 8 years following promulgation of the small dehydrator standards merely due to the addition of these new MACT requirements.

2. Storage Vessels

Crude oil, condensate and produced water are typically stored in fixed-roof storage vessels. Some vessels used for storing produced water may be open-top tanks. These vessels, which are operated at or near atmospheric pressure conditions, are typically located at tank batteries. A tank battery refers to the collection of process components used to separate, treat and store crude oil, condensate, natural gas and produced water. The extracted products from productions wells enter the tank battery through the production header, which may collect product from many wells.

Emissions from storage vessels are a result of working, breathing and flash losses. Working losses occur due to the emptying and filling of storage tanks. Breathing losses are the release of gas associated with daily temperature fluctuations and other equilibrium effects. Flash losses occur when a liquid with entrained gases is transferred from a vessel with higher pressure to a vessel with lower pressure, thus, allowing entrained gases or a portion of the liquid to vaporize or flash. In the oil and natural gas production segment, flashing losses occur when live crude oils or condensates flow into a storage tank from a processing vessel operated at a higher pressure. Typically, the larger the pressure drop, the more flashing emission will occur in the storage stage. Temperature of the liquid may also influence the amount of flash emissions.

In the Oil and Natural Gas Production NESHAP (40 CFR part 63, subpart HH), the MACT standards for storage vessels apply only to those with the PFE. Storage vessels with the PFE are defined as storage vessels that contain hydrocarbon liquids that meet the following criteria:

- A stock tank gas to oil ratio (GOR) greater than or equal to 0.31 cubic meters per liter (m^3/liter); and
- An American Petroleum Institute (API) gravity greater than or equal to 40 degrees; and
- An actual annual average hydrocarbon liquid throughput greater than or equal to 79,500 liters per day (liter/day).

Accordingly, there is no emission limit in the existing MACT for storage vessels without the PFE. However, the MACT analysis performed at the time indicates that the MACT floor was based on all storage vessels, not just those vessels with flash emissions. See, *Recommendation of MACT Floor Levels for HAP Emission Points at Major Sources in the Oil and Natural Gas Production Source Category*, (September 23, 1997, Docket A–94–04, Item II–A–07). We, therefore, propose to apply the existing MACT for storage vessels with PFE to all storage vessels (*i.e.*, storage vessels with the PFE, as well as those without the PFE).

3. Definition of Associated Equipment

CAA section 112(n)(4)(A) provides:

> Notwithstanding the provisions of subsection (a), emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in contiguous area or under common control, to determine whether such units or stations are major sources.

As stated above, the CAA prevents aggregation of HAP emissions from wells and associated equipment in making major source determinations. In the absence of clear guidance in the statute on what constitutes "associated equipment," the EPA sought to define

"associated equipment" in a way that recognizes the need to implement relief for this industry as Congress intended and that also allow for the appropriate regulation of significant emission points. 64 FR at 32619. Accordingly, in the existing Oil and Natural Gas Production NESHAP (1998 and 1999 NESHAP), the EPA defined "associated equipment" to exclude glycol dehydration units and storage vessels with PFE (thus allowing their emissions to be included in determining major source status) because EPA identified these sources as substantial contributors to HAP emissions. *Id.* EPA explained in that NESHAP that, because a single storage vessel with flash emissions may emit several Mg of HAP per year and individual glycol dehydrators may emit above the major source level, storage vessels with PFE and glycol dehydrators are large individual sources of HAP, 63 FR 6288, 6301 (1998). The EPA therefore considered these emission sources substantial contributors to HAP emissions and excluded them from the definition of "associated equipment." 64 FR at 32619. We have recently examined HAP emissions from storage vessels without flash emissions and found that these emissions are significant and comparable to those vessels with flash emissions. For example, one storage vessel with an API gravity of 30 degrees and a GOR of 2.09 $\times 10^{-3}$ m^3/liter with a throughput of 79,500 liter/day had HAP emissions of 9.91 Mg/yr, including 9.45 Mg/yr of n-hexane.

Because storage vessels without the PFE can have significant emissions at levels that are comparable to emissions from storage vessels with the PFE, there is no appreciable difference between storage vessels with the PFE and those without the PFE for purposes of defining "associated equipment." We are, therefore, proposing to amend the associated equipment definition to exclude all storage vessels and not just storage vessels with the PFE.

C. How did we perform the risk assessment and what are the results and proposed decisions?

1. How did we estimate risks posed by the source categories?

The EPA conducted risk assessments that provided estimates for each source in a category of the MIR posed by the HAP emissions, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects. The assessments also provided estimates of the distribution of cancer risks within the exposed populations, cancer incidence and an evaluation of the potential for adverse environmental effects for each source category. The risk assessments consisted of seven primary steps, as discussed below. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Draft Residual Risk Assessment for the Oil and Gas Production and Natural Gas Transmission and Storage Source Categories.* The methods used to assess risks (as described in the seven primary steps below) are consistent with those peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010 [14]; they are also consistent with the key recommendations contained in that report.

a. Establishing the Nature and Magnitude of Actual Emissions and Identifying the Emissions Release Characteristics

As discussed in section VII.A of this preamble, we used a dataset based on the 2005 NEI as the basis for the risk assessment. In addition to the quality assurance (QA) of the facilities contained in the dataset, we also checked the coordinates of every facility in the dataset through visual observations using tools such as GoogleEarth and ArcView. Where coordinates were found to be incorrect, we identified and corrected them to the extent possible. We also performed QA of the emissions data and release characteristics to ensure there were no outliers.

b. Establishing the Relationship Between Actual Emissions and MACT-Allowable Emissions Levels

The available emissions data in the MACT dataset represent the estimates of mass of emissions actually emitted during the specified annual time period. These "actual" emission levels are often lower than the emission levels that a facility might be allowed to emit and still comply with the MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the "MACT-allowable" emissions level. This represents the highest emissions level that could be emitted by the facility without violating the MACT standards.

We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those previous actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. (54 FR 38044, September 14, 1989.)

To estimate emissions at the MACT-allowable level, we developed a ratio of MACT-allowable to actual emissions for each emissions source type in each source category, based on the level of control required by the MACT standards compared to the level of reported actual emissions and available information on the level of control achieved by the emissions controls in use.

c. Conducting Dispersion Modeling, Determining Inhalation Exposures and Estimating Individual and Population Inhalation Risks

Both long-term and short-term inhalation exposure concentrations and health risks from each source in the source categories addressed in this proposal were estimated using the Human Exposure Model (HEM) (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The dispersion model used by HEM–3 is AERMOD, which is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[15] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data,

[14] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

[15] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

which is used for dispersion calculations. This library includes 1 year of hourly surface and upper air observations for more than 158 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[16] internal point locations and populations provides the basis of human exposure calculations (Census, 2000). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentration of each of the HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of an inhabited census block. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter) by its unit risk estimate (URE), which is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without the EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of or in addition to other values, if appropriate.

Formaldehyde is a unique case. In 2004, the EPA determined that the Chemical Industry Institute of Toxicology (CIIT) cancer dose-response value for formaldehyde (5.5×10^{-9} per $\mu g/m^3$) was based on better science than the IRIS cancer dose-response value (1.3×10^{-5} per $\mu g/m^3$) and we switched from using the IRIS value to the CIIT value in risk assessments supporting regulatory actions. However, subsequent research published by the EPA suggests that the CIIT model was not appropriate and in 2010 the EPA returned to using the 1991 IRIS value, which is more health protective.[17] The EPA has been working on revising the formaldehyde IRIS assessment and the National Academy of Sciences (NAS) completed its review of the EPA's draft in May of 2011. EPA is reviewing the public comments and the NAS independent scientific peer review, and the draft IRIS assessment will be revised and the final assessment will be posted on the IRIS database. In the interim, we will present findings using the 1991 IRIS value as a primary estimate, and may also consider other information as the science evolves.

In the case of benzene, the high end of the reported cancer URE range was used in our assessments to provide a conservative estimate of potential cancer risks. Use of the high end of the range provides risk estimates that are approximately 3.5 times higher than use of the equally-plausible low end value. We also evaluated the impact of using the low end of the URE range on our risk results.

We also note that polycyclic organic matter (POM), a carcinogenic HAP with a mutagenic mode of action, is emitted by some of the facilities in these two categories.[18] For this compound group,[19] the age-dependent adjustment factors (ADAF) described in the EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*[20] were applied. This adjustment has the effect of increasing the estimated lifetime risks for POM by a factor of 1.6. In addition, although only a small fraction of the total POM emissions were not reported as individual compounds, the EPA expresses carcinogenic potency for compounds in this group in terms of benzo[a]pyrene equivalence, based on evidence that carcinogenic POM has the same mutagenic mechanism of action as benzo[a]pyrene. For this reason, the EPA's Science Policy Council[21] recommends applying the *Supplemental Guidance* to all carcinogenic polycyclic aromatic hydrocarbons for which risk estimates are based on relative potency. Accordingly, we have applied the ADAF to the benzo[a]pyrene equivalent portion of all POM mixtures.

Incremental individual lifetime cancer risks associated with emissions from the source category were estimated as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans and suggestive evidence of carcinogenic potential[22]) emitted by the modeled source. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of any source were also estimated for the source category as part of these assessments by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

To assess risk of noncancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ for chronic exposures is the estimated chronic

[16] A census block is generally the smallest geographic area for which census statistics are tabulated.

[17] For details on the justification for this decision, see the memorandum in the docket from Peter Preuss to Steve Page entitled, *Recommendation for Formaldehyde Inhalation Cancer Risk Values*, January 22, 2010.

[18] U.S. EPA. Performing risk assessments that include carcinogens described in the *Supplemental Guidance* as having a mutagenic mode of action. *Science Policy Council Cancer Guidelines Implementation Work Group Communication II:* Memo from W.H. Farland, dated October 4, 2005.

[19] See the *Risk Assessment for Source Categories* document available in the docket for a list of HAP with a mutagenic mode of action.

[20] U.S. EPA. *Supplemental Guidance for Assessing Early-Life Exposure to Carcinogens*. EPA/630/R–03/003F, 2005. *http://www.epa.gov/ttn/otw/childrens_supplement_final.pdf.*

[21] U.S. EPA. *Science Policy Council Cancer Guidelines Implementation Workgroup Communication II:* Memo from W.H. Farland, dated June 14, 2006.

[22] These classifications also coincide with the terms "known carcinogen, probable carcinogen and possible carcinogen," respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment*, published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of EPA's NATA entitled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory*, available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

exposure divided by the chronic reference level, which is either the EPA reference concentration (RfC), defined as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime," or, in cases where an RfC from the EPA's IRIS database is not available, the EPA will utilize the following prioritized sources for our chronic dose-response values: (1) The Agency for Toxic Substances and Disease Registry Minimum Risk Level, which is defined as "an estimate of daily human exposure to a substance that is likely to be without an appreciable risk of adverse effects (other than cancer) over a specified duration of exposure"; (2) the CalEPA Chronic Reference Exposure Level (REL), which is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration"; and (3), as noted above, in cases where scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use those dose-response values in place of or in concert with other values.

Screening estimates of acute exposures and risks were also evaluated for each of the HAP at the point of highest off-site exposure for each facility (*i.e.*, not just the census block centroids), assuming that a person is located at this spot at a time when both the peak (hourly) emission rate and worst-case dispersion conditions (1991 calendar year data) occur. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, acute HQ values were calculated using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emission rates, meteorology and exposure location for our acute analysis.

As described in the CalEPA's *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration." Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. Acute REL values are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Since margins of safety are incorporated to address data gaps and uncertainties, exceeding the acute REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in *Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances (http://www.epa.gov/opptintr/aegl/pubs/sop.pdf),*[23] "the NRC's previous name for acute exposure levels—community emergency exposure levels—was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites." This document also states that AEGL values "represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours." The document lays out the purpose and objectives of AEGL by stating (page 21) that "the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals." In detailing the intended application of AEGL values, the document states (page 31) that "[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. Federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers."

The AEGL–1 value is then specifically defined as "the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure." The document also notes (page 3) that, "Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects." Similarly, the document defines AEGL–2 values as "the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape."

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's document entitled, *Emergency Response Planning Guidelines (ERPG) Procedures and Responsibilities* (*http://www.aiha.org/1documents/committees/ERPSOPs2006.pdf*) which states that, "Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals."[24] The ERPG–1 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor." Similarly, the ERPG–2 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action."

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed; in these instances, higher severity level AEGL–2 or ERPG–2 values are compared to our modeled

[23] NAS, 2001. *Stonding Operating Procedures for Developing Acute Exposure Levels for Hozordous Chemicols,* page 2.

[24] *ERP Committee Procedures and Responsibilities.* November 1, 2006. American Industrial Hygiene Association.

exposure levels to screen for potential acute concerns.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures, we developed estimates of maximum hourly emission rates by multiplying the average actual annual hourly emission rates by a factor to cover routinely variable emissions. We chose the factor based on process knowledge and engineering judgment and with awareness of a Texas study of short-term emissions variability, which showed that most peak emission events, in a heavily-industrialized 4-county area (Harris, Galveston, Chambers and Brazoria Counties, Texas) were less than twice the annual average hourly emission rate. The highest peak emission event was 74 times the annual average hourly emission rate, and the 99th percentile ratio of peak hourly emission rate to the annual average hourly emission rate was 9.[25] This analysis is provided in Appendix 4 of the *Draft Residual Risk Assessment for the Oil and Gas Production and Natural Gas Transmission and Storage Source Categories,* which is available in the docket for this action. Considering this analysis, unless specific process knowledge or data are available to provide an alternate value, to account for more than 99 percent of the peak hourly emissions, we apply a conservative screening multiplication factor of 10 to the average annual hourly emission rate in these acute exposure screening assessments. The factor of 10 was used for both the Oil and Natural Gas Production and the Natural Gas Transmission and Storage source categories.

In cases where acute HQ values from the screening step were less than or equal to 1, acute impacts were deemed negligible and no further analysis was performed. In cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. The data refinements employed for these source categories consisted of using the site-specific facility layout to distinguish facility property from an area where the public could be exposed. These refinements are discussed in the draft risk assessment document, which is available in the docket for each of these source categories. Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emission rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. However, we recognize that having this level of data is rare, hence our use of the multiplier approach.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies,[26] we generally examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. Comparisons of the estimated maximum off-site 1-hour exposure levels are not typically made to occupational levels for the purpose of characterizing public health risks in RTR assessments. This is because they are developed for working age adults and are not generally considered protective for the general public. We note that occupational ceiling values are, for most chemicals, set at levels higher than a 1-hour AEGL–1.

As discussed in section VII.C.2 of this preamble, the maximum estimated worst-case 1-hour exposure to benzene outside the facility fence line for a facility in either source category is 12 mg/m^3. This estimated exposure exceeds the 6-hour REL by a factor of 9 (HQ_{REL} = 9), but is significantly below the 1-hour AEGL–1 (HQ_{AEGL-1} = 0.07). Although this worst-case exposure estimate does not exceed the AEGL–1, we note here that it slightly exceeds workplace ceiling level guidelines designed to protect the worker population for short duration (<15 minute) increases in exposure to benzene, as discussed below. The occupational short-term exposure limit (STEL) standard for benzene developed by the Occupational Safety and Health Administration is 16 mg/m^3, "as averaged over any 15-minute period."[27] Occupational guideline STEL for exposures to benzene have also been developed by the American Conference of Governmental Industrial Hygienists (ACGIH)[28] for less than 15 minutes[29] (ACGIH threshold limit value (TLV)-STEL value of 8.0 mg/m^3), and by the National Institute for Occupational Safety and Health (NIOSH)[30] "for any 15 minute period in a work day" (NIOSH REL–STEL of 3.2 mg/m^3). These shorter duration occupational values indicate potential concerns regarding health effects at exposure levels below the 1-hour AEGL–1 value. We solicit comment on the use of the occupational values described above in the interpretation of these worst-case acute screening exposure estimates.

d. Conducting Multi-Pathway Exposure and Risk Modeling

The potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* multi-pathway exposures) and the potential for adverse environmental impacts were evaluated in a three-step process. In the first step, we determined whether any facilities emitted any HAP known to be PB–HAP (HAP known to be persistent and bio-accumulative) in the environment. There are 14 PB–HAP compounds or compound classes identified for this screening in the EPA's *Air Toxics Risk Assessment Library* (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*). They are cadmium compounds, chlordane, chlorinated dibenzodioxins and furans,

[25] See *http://www.tceq.stote.tx.us/complionce/field_ops/eer/index.html* or docket to access the source of these data.

[26] The SAB peer review of RTR Risk Assessment Methodologies is available at: *http://yosemite.epo.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

[27] 29 CFR 1910.1028, Benzene. Available online at *http://www.osho.gov/pls/oshoweb/owodisp.show_document?p_table=STANDARDS&p_id=10042.*

[28] ACGIH (2001) Benzene. In *Documentotion of the TLVs® ond BEIs® with Other Worldwide Occupotional Exposure Values.* ACGIH, 1300 Kemper Meadow Drive, Cincinnati, OH 45240 (ISBN: 978–1–882417–74–2) and available online at *http://www.acgih.org.*

[29] The ACGIH definition of a TLV–STEL states that "Exposures above the TLV–TWA up to the TLV–STEL should be less than 15 minutes, should occur no more than four times per day, and there should be at least 60 minutes between successive exposures in this range."

[30] NIOSH. *Occupotional Safety and Health Guideline for Benzene; http://www.cdc.gov/niosh/74-137.html.*

dichlorodiphenyldichloroethylene, heptachlor, hexachlorobenzene, hexachlorocyclohexane, lead compounds, mercury compounds, methoxychlor, polychlorinated biphenyls, POM, toxaphene and trifluralin.

Since one or more of these PB–HAP are emitted by at least one facility in both source categories, we proceeded to the second step of the evaluation. In this step, we determined whether the facility-specific emission rates of each of the emitted PB–HAP were large enough to create the potential for significant non-inhalation human or environmental risks under reasonable worst-case conditions. To facilitate this step, we have developed emission rate thresholds for each PB–HAP using a hypothetical worst-case screening exposure scenario developed for use in conjunction with the EPA's TRIM.FaTE model. The hypothetical screening scenario was subjected to a sensitivity analysis to ensure that its key design parameters were established such that environmental media concentrations were not underestimated (*i.e.*, to minimize the occurrence of false negatives or results that suggest that risks might be acceptable when, in fact, actual risks are high) and to also minimize the occurrence of false positives for human health endpoints. We call this application of the TRIM.FaTE model TRIM–Screen. The facility-specific emission rates of each of the PB–HAP in each source category were compared to the TRIM–Screen emission threshold values for each of the PB–HAP identified in the source category datasets to assess the potential for significant human health risks or environmental risks via non-inhalation pathways.

There was only one facility in the Natural Gas Transmission and Storage source category with reported emissions of PB–HAP, and the emission rates were less than the emission threshold values. There were 29 facilities in the Oil and Natural Gas Production source category with reported emissions of PB–HAP, and one of these had emission rates greater than the emission threshold values. In this case, the emission threshold value for POM was exceeded by a factor of 6. For POM, dairy, vegetables and fruits were the three most dominant exposure pathways driving human exposures in the hypothetical screening exposure scenario. The single facility with emissions exceeding the emission threshold value for POM is located in a highly industrialized area. Therefore, since the exposure pathways which would drive high human exposure are not locally available, multi-pathway exposures and environmental risks were deemed negligible, and no further analysis was performed. For further information on the multi-pathway analysis approach, see the residual risk documentation.

e. Assessing Risks Considering Emissions Control Options

In addition to assessing baseline inhalation risks and screening for potential multi-pathway risks, where appropriate, we also estimated risks considering the potential emission reductions that would be achieved by the particular control options under consideration. In these cases, the expected emissions reductions were applied to the specific HAP and emissions sources in the source category dataset to develop corresponding estimates of risk reductions.

f. Conducting Other Risk-Related Analyses: Facility-Wide Assessments

To put the source category risks in context, we also examined the risks from the entire "facility," where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, for each facility that includes one or more sources from one of the source categories under review, we examined the HAP emissions not only from the source category of interest, but also from all other emission sources at the facility. The emissions data for generating these "facility-wide" risks were also obtained from the 2005 NEI. For every facility included in the MACT database, we also retrieved emissions data and release characteristics for all other emission sources at the same facility. We estimated the risks due to the inhalation of HAP that are emitted "facility-wide" for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the source categories addressed in this proposal. We specifically examined the facilities associated with the highest estimates of risk and determined the percentage of that risk attributable to the source category of interest. The risk documentation available through the docket for this action provides the methodology and the results of the facility-wide analyses for each source category.

g. Conducting Other Analyses: Demographic Analysis

To examine the potential for any environmental justice (EJ) issues that might be associated with each source category, we performed a demographic analysis of population risk. In this analysis, we evaluated the distributions of HAP-related cancer and noncancer risks across different social, demographic and economic groups within the populations living near the facilities where these source categories are located. The development of demographic analyses to inform the consideration of EJ issues in the EPA rulemakings is an evolving science. The EPA offers the demographic analyses in this rulemaking to inform the consideration of potential EJ issues and invites public comment on the approaches used and the interpretations made from the results, with the hope that this will support the refinement and improve the utility of such analyses for future rulemakings.

For the demographic analyses, we focus on the populations within 50 km of any facility estimated to have exposures to HAP which result in cancer risks of 1-in-1 million or greater, or noncancer HI of 1 or greater (based on the emissions of the source category or the facility, respectively). We examine the distributions of those risks across various demographic groups, comparing the percentages of particular demographic groups to the total number of people in those demographic groups nationwide. The results, including other risk metrics, such as average risks for the exposed populations, are documented in source-category-specific technical reports in the docket for both source categories covered in this proposal.

The basis for the risk values used in these analyses were the modeling results based on actual emissions levels obtained from the HEM–3 model described above. The risk values for each census block were linked to a database of information from the 2000 Decennial census that includes data on race and ethnicity, age distributions, poverty status, household incomes and education level. The Census Department Landview® database was the source of the data on race and ethnicity and the data on age distributions, poverty status, household incomes and education level were obtained from the 2000 Census of Population and Housing Summary File 3 Long Form. While race and ethnicity census data are available at the census block level, the age and income census data are only available at the census block group level (which includes an

average of 26 blocks or an average of 1,350 people). Where census data are available at the block group level, but not the block level, we assumed that all census blocks within the block group have the same distribution of ages and incomes as the block group.

For each source category, we focused on those census blocks where source category risk results show estimated lifetime inhalation cancer risks above 1-in-1 million or chronic noncancer indices above 1 and determined the relative percentage of different racial and ethnic groups, different age groups, adults with and without a high school diploma, people living in households below the national median income and for people living below the poverty line within those census blocks. The specific census population categories studied include:

- Total population
- White
- African American (or Black)
- Native Americans
- Other races and multiracial
- Hispanic or Latino
- Children 18 years of age and under
- Adults 19 to 64 years of age
- Adults 65 years of age and over
- Adults without a high school diploma
- Households earning under the national median income
- People living below the poverty line

It should be noted that these categories overlap in some instances, resulting in some populations being counted in more than one category (*e.g.*, other races and multiracial and Hispanic). In addition, while not a specific census population category, we also examined risks to "Minorities," a classification which is defined for these purposes as all race population categories except white.

For further information about risks to the populations located near the facilities in these source categories, we also evaluated the estimated distribution of inhalation cancer and chronic noncancer risks associated with the HAP emissions from all the emissions sources at the facility (*i.e.*, facility-wide). This analysis used the facility-wide RTR modeling results and the census data described above.

The methodology and the results of the demographic analyses for each source category are included in a source-category-specific technical report for each of the categories, which are available in the docket for this action.

h. Considering Uncertainties in Risk Assessment

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source categories addressed in this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions datasets, dispersion modeling, inhalation exposure estimates and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the risk assessment documentation (referenced earlier) available in the docket for this action.

i. Uncertainties in the Emissions Datasets

Although the development of the MACT dataset involved QA/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are inaccurate, errors in estimating emissions values and other factors. The emission estimates considered in this analysis generally are annual totals for certain years that do not reflect short-term fluctuations during the course of a year or variations from year to year.

The estimates of peak hourly emission rates for the acute effects screening assessment were based on a multiplication factor of 10 applied to the average annual hourly emission rate, which is intended to account for emission fluctuations due to normal facility operations. Additionally, although we believe that we have data for most facilities in these two source categories in our RTR dataset, our dataset may not include data for all existing facilities. Moreover, there are uncertainties with regard to the identification of sources as major or area in the NEI for these source categories.

ii. Uncertainties in Dispersion Modeling

While the analysis employed the EPA's recommended regulatory dispersion model, AERMOD, we recognize that there is uncertainty in ambient concentration estimates associated with any model, including AERMOD. In circumstances where we had to choose between various model options, where possible, model options (*e.g.*, rural/urban, plume depletion, chemistry) were selected to provide an overestimate of ambient air concentrations of the HAP rather than underestimates. However, because of practicality and data limitation reasons, some factors (*e.g.*, meteorology, building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. For example, meteorological data were taken from a single year (1991) and facility locations can be a significant distance from the site where these data were taken. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient HAP concentrations.

iii. Uncertainties in Inhalation Exposure

The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[31] The assumption of not considering short or long-term population mobility does not bias the estimate of the theoretical MIR, nor does it affect the estimate of cancer incidence since the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific risk levels.

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live further from the facility, and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but is an unbiased estimate of average risk and incidence.

The assessments evaluate the cancer inhalation risks associated with continuous pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions sources at facilities actually operate (*i.e.*, more or less than 70 years), and the domestic growth or decline of the modeled industry (*i.e.*, the increase

[31] Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

or decrease in the number or size of United States facilities), will influence the risks posed by a given source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in rare cases, where a facility maintains or increases its emission levels beyond 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the risks could potentially be underestimated. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[32]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to overestimate actual exposures since it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

iv. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the *EPA 2005 Cancer Guidelines;* namely, that "the primary goal of the EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective." (*EPA 2005 Cancer Guidelines,* pages 1–7.) This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the residual risk documentation, which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit).[33] In some circumstances, the true risk could be as low as zero; however, in other circumstances, the risk could also be greater.[34] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health-protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic noncancer reference (RfC and reference dose (RfD)) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of daily oral exposure (RfD) or of a continuous inhalation exposure (RfC) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994) which includes consideration of both uncertainty and variability. When there are gaps in the available information, UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,[35] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated. While collectively termed "uncertainty factor," these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies. Many of the UF used to account for variability and uncertainty in the development of acute reference values

[32] U.S. EPA. *Notional-Scole Air Toxics Assessment for 1996.* (EPA 453/R–01–003; January 2001; page 85.)

[33] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[34] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible and which is based on maximum likelihood estimates.

[35] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) "[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain." The 1983 NRC report, *Risk Assessment in the Federal Government: Monoging the Process,* defined default option as "the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary" (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, 2004, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epo.gov/oso/pdfs/rotf-finol.pdf.*

are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. UF are applied based on chemical-specific or health effect-specific information (*e.g.*, simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.*, 4 hours) to derive an acute reference value at another exposure duration (*e.g.*, 1 hour).

Not all acute reference values are developed for the same purpose and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Although every effort is made to identify peer-reviewed reference values for cancer and noncancer effects for all pollutants emitted by the sources included in this assessment, some HAP continue to have no reference values for cancer or chronic noncancer or acute effects. Since exposures to these pollutants cannot be included in a quantitative risk estimate, an understatement of risk for these pollutants at environmental exposure levels is possible. For a group of compounds that are either unspeciated or do not have reference values for every individual compound (*e.g.*, glycol ethers), we conservatively use the most protective reference value to estimate risk from individual compounds in the group of compounds.

Additionally, chronic reference values for several of the compounds included in this assessment are currently under the EPA IRIS review and revised assessments may determine that these pollutants are more or less potent than the current value. We may re-evaluate residual risks for the final rulemaking if these reviews are completed prior to our taking final action for these source categories and a dose-response metric changes enough to indicate that the risk assessment supporting this notice may significantly understate human health risk.

v. Uncertainties in the Multi-Pathway and Environmental Effects Assessment

We generally assume that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. For each source category, we generally rely on the site-specific levels of PB–HAP emissions to determine whether a full assessment of the multi-pathway and environmental effects is necessary. As discussed above, we conclude that the potential for these types of impacts is low for these source categories.

vi. Uncertainties in the Facility-Wide Risk Assessment

Given that the same general analytical approach and the same models were used to generate facility-wide risk results as were used to generate the source category risk results, the same types of uncertainties discussed above for our source category risk assessments apply to the facility-wide risk assessments. Additionally, the degree of uncertainty associated with facility-wide emissions and risks is likely greater because we generally have not conducted a thorough engineering review of emissions data for source categories not currently undergoing an RTR review.

vii. Uncertainties in the Demographic Analysis

Our analysis of the distribution of risks across various demographic groups is subject to the typical uncertainties associated with census data (*e.g.*, errors in filling out and transcribing census forms), as well as the additional uncertainties associated with the extrapolation of census-block group data (*e.g.*, income level and education level) down to the census block level.

2. What are the results and proposed decisions from the risk review for the Oil and Natural Gas Production source category?

a. Results of the Risk Assessments and Analyses

We conducted an inhalation risk assessment for the Oil and Natural Gas Production source category. We also conducted an assessment of facility-wide risk. Details of the risk assessments and analyses can be found in the residual risk documentation, which is available in the docket for this action. For informational purposes and to examine the potential for any EJ issues that might be associated with each source category, we performed a demographic analysis of population risks.

i. Inhalation Risk Assessment Results

Table 2 provides an overall summary of the results of the inhalation risk assessment.

TABLE 2—OIL AND NATURAL GAS PRODUCTION INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at risk ≥ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]		Maximum off-site acute noncancer HQ [5]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
990	40	100–400 [3]	160,000 [3]	0.007–0.02 [3]	0.1	0.7	HQ_{REL} = 9 (benzene) HQ_{AEGL-1} = 0.07 (benzene)

[1] Number of facilities evaluated in the risk analysis.

[2] Estimated maximum individual excess lifetime cancer risk.

[3] The EPA IRIS assessment for benzene provides a range of equally-plausible URE (2.2E–06 to 7.8E–06 per ug/m3), giving rise to ranges for the estimates of cancer MIR and cancer incidence. Estimated population values are not scalable with benzene URE range, but would be lower using the lower end of the URE range.

[4] Maximum TOSHI. The target organ with the highest TOSHI for the Oil and Natural Gas Production source category is the respiratory system.

[5] The maximum estimated acute exposure concentration was divided by available short-term dose-response values to develop an array of HQ values.

As shown in Table 2, the results of the inhalation risk assessment performed using actual emissions data indicate the maximum lifetime individual cancer risk could be as high as 40-in-1 million, with POM driving the highest risk, and benzene driving risks overall. The total estimated cancer incidence from this source category is 0.02 excess cancer cases per year (0.007 excess cancer cases per year based on the lower end of the benzene URE range), or one case in every 50 years. Approximately 160,000 people are estimated to have cancer risks at or above 1-in-1 million as a result of the emissions from 89 facilities (use of the lower end of the benzene URE range would further reduce this population estimate). The maximum chronic non-cancer TOSHI value for the source category could be up to 0.1 from emissions of naphthalene, indicating no significant potential for chronic noncancer impacts.

As explained above, our analysis of potential differences between actual emission levels and emissions allowable under the oil and natural gas production MACT standard indicate that MACT-allowable emission levels may be up to 50 times greater than actual emission levels. Considering this difference, the risk results from the inhalation risk assessment indicate the maximum lifetime individual cancer risk could be as high as 400-in-1 million (100-in-1 million based on the lower end of the benzene URE range) and the maximum chronic noncancer TOSHI value could be as high as 0.7 at the MACT-allowable emissions level.

ii. Facility-Wide Risk Assessment Results

A facility-wide risk analysis was also conducted based on actual emissions levels. Table 3 displays the results of the facility-wide risk assessment. For detailed facility-specific results, see Table 2 of Appendix 6 of the risk document in the docket for this rulemaking.

TABLE 3—OIL AND NATURAL GAS PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	990
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	100
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	1
Number of facilities at which the Oil and Natural Gas Production source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities with facility-wide individual cancer risk of 1-in-1 million or more	140
Number of facilities at which the Oil and Natural Gas Production source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	85
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	9
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	10
Number of facilities at which the Oil and Natural Gas Production source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the oil and natural gas production MACT standards is estimated to be 100-in-1 million, based on actual emissions. Of the 990 facilities included in this analysis, only one has a facility-wide MIR of 100-in-1 million. At this facility, oil and natural gas production accounts for less than 2 percent of the total facility-wide risk. Nickel emissions from oil-fired boilers and formaldehyde emissions from reciprocating internal combustion engines (RICE) contribute essentially all the facility-wide risks at this facility, with over 80 percent of the risk attributed to the nickel emissions.[36] There are 140 facilities with facility-wide MIR of 1-in-1 million or greater. Of these facilities, 85 have oil and natural gas production operations that contribute greater than 50 percent to the facility-wide risks. As discussed above, we are proposing MACT standards for BTEX emissions from small glycol dehydrators in this action. These standards would reduce the risk from benzene emissions at facilities with oil and gas production. Formaldehyde emissions will be assessed under future RTR for RICE.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be 9 based on actual emissions. Of the 990 facilities included in this analysis, 10 have facility-wide maximum chronic noncancer TOSHI values greater than 1. Of these facilities, none had oil and natural gas production operations that contributed greater than 50 percent to these facility-wide risks. The chronic noncancer risks at these 10 facilities are primarily driven by acrolein emissions from RICE.

iii. Demographic Risk Analysis Results

The results of the demographic analyses performed to investigate the distribution of cancer risks at or above 1-in-1 million among the surrounding population are summarized in Table 4 below. These results, for various demographic groups, are based on actual emissions levels for the population living within 50 km of the facilities.

TABLE 4—OIL AND NATURAL GAS PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to	
		Source category HAP emissions	Facility-wide HAP emissions
Total Population	285,000,000	160,000	597,000

[36] We note that there is an ongoing IRIS reassessment for formaldehyde, and that future RTR risk assessments will use the cancer potency for formaldehyde that results from that reassessment. As a result, the current results may not match those of future assessments.

TABLE 4—OIL AND NATURAL GAS PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to	
		Source category HAP emissions	Facility-wide HAP emissions
Race by Percent			
White	75	62	61
All Other Races	25	38	39
Race by Percent			
White	75	62	61
African American	12	12	8
Native American	0.9	0.7	1.3
Other and Multiracial	12	25	30
Ethnicity by Percent			
Hispanic	14	22	34
Non-Hispanic	86	78	66
Income by Percent			
Below Poverty Level	13	14	19
Above Poverty Level	87	86	81
Education by Percent			
Over 25 and without High School Diploma	13	10	16
Over 25 and with a High School Diploma	87	90	84

The results of the Oil and Natural Gas Production source category demographic analysis indicate that there are approximately 160,000 people exposed to a cancer risk at or above 1-in-1 million due to emissions from the source category, including an estimated 38 percent that are classified as minority (listed as "All Other Races" in the table above). Of the 160,000 people with estimated cancer risks at or above 1-in-1 million from the source category, 25 percent are in the "Other and Multiracial" demographic group, 22 percent are in the "Hispanic or Latino" demographic group, and 14 percent are in the "Below Poverty Level" demographic group, results which are 13, 8 and 1 percentage points higher, respectively, than the respective percentages for these demographic groups across the United States. The percentages for the other demographic groups are lower than their respective nationwide percentages. The table also shows that there are approximately 597,000 people exposed to an estimated cancer risk at or above 1-in-1 million due to facility-wide emissions, including 30 percent in the "Other and Multiracial" demographic group, 34 percent in the "Hispanic or Latino" demographic group, 1.3 percent in the "Native American" demographic group and 16 percent in the "Over 25 and without High School Diploma" demographic group, results which are 18, 2, 0.4 and 3 percentage points higher than the percentages for these demographic groups across the United States, respectively. The percentages for the other demographic groups are lower than their respective nationwide percentages.

b. What are the proposed risk decisions for the Oil and Natural Gas Production source category?

i. Risk Acceptability

In the risk analysis we performed for this source category, pursuant to CAA section 112(f)(2), we considered the available health information—the MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer hazard; the extent of noncancer risks; the potential for adverse environmental effects; and distribution of risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the Oil and Natural Gas Production source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be as high as 40-in-1 million due to actual emissions and as high as 400-in-1 million due to MACT-allowable emissions (100-in-1 million, based on the lower end of the benzene URE range). While the 40-in-1 million risk due to actual emissions is considerably less than 100-in-1 million, which is the presumptive limit of acceptability, the 400-in-1 million risk due to allowable emissions is considerably higher and is considered unacceptable. We do note, however, that the risk analysis shows low cancer incidence (1 case in every 50 years), low potential for adverse environmental effects or human health multi-pathway effects and that chronic noncancer health impacts are unlikely.

We also conclude that acute noncancer health impacts are unlikely. As discussed above, screening estimates of acute exposures and risks were evaluated for each of the HAP at the point of highest off-site exposure for each facility (*i.e.*, not just the census block centroids) assuming that a person is located at this spot at a time when both the peak emission rate and worst-case dispersion conditions occur. Under these worst-case conditions, we estimate benzene acute HQ values (based on the REL) could be as high as 9. Although the REL (which indicates the level below which adverse effects are not anticipated) is exceeded in this case, we believe the potential for acute effects is low for several reasons. First, the acute modeling scenario is worst-case because of the confluence of peak emission rates and worst-case dispersion conditions.

Second, the benzene REL is based on a 6-hour exposure duration because a 1-hour exposure duration value was unavailable. An REL based on a 6-hour exposure duration is generally lower than an REL based on a 1-hour exposure duration and, consequently, easier to exceed. Also, although there are exceedances of the REL, the highest estimated 1-hour exposure is less than 10 percent of the AEGL–1 value, which is a level at which effects could be experienced. Finally, the generally sparse populations near these facilities make it less likely that a person would be near the plant to be exposed. For example, in the two cases where the acute HQ value is as high as 9, there are only 30 people associated with the census blocks within 2 miles of the two facilities.

While our additional analysis of facility-wide risks showed that there is one facility with maximum facility-wide cancer risk of 100-in-1 million or greater and 10 facilities with a maximum chronic noncancer TOSHI greater than 1, it also showed that oil and natural gas production operations did not drive these risks.

In determining whether risk is acceptable, we considered the available health information, as described above. In this case, although a number of factors we considered indicate relatively low risk concern, we are proposing to determine that the risks are unacceptable, in large part, because the MIR is 400-in-1 million due to MACT-allowable emissions, which greatly exceeds the "presumptive limit on maximum individual lifetime risk of approximately 1-in-10 thousand [100-in-1 million] recognized in the Benzene NESHAP (54 FR 38045)." The MIR, based on MACT-allowable emissions, is driven by the allowable emissions of 0.9 Mg/yr benzene under the MACT as a compliance option. We are, therefore, proposing to eliminate the alternative compliance option of 0.9 Mg/yr benzene from the existing glycol dehydrator MACT requirements. With this change, the source category MIR, based on MACT-allowable emissions, would be reduced to 40-in-1 million, which we find acceptable in light of all the other factors considered. Thus, we are proposing that the risks from the Oil and Natural Gas Production source category are acceptable, with the removal of the alternative compliance option of 0.9 Mg/yr benzene limit from the current glycol dehydrator MACT requirements.

Pursuant to CAA section 112(f)(4), we are proposing that this change (*i.e.*, removal of the 0.9 Mg/yr compliance alternative) apply 90 days after its effective date. We are requesting comment on whether or not this is sufficient time for the large dehydrators that have been relying on this compliance alternative to come into compliance with the 95-percent control requirement or if additional time is needed. See CAA section 112(f)(4)(A).

We recognize that our proposal to remove the 0.9 Mg/yr compliance alternative for the 95-percent control glycol dehydrator MACT standard could have negative impacts on some sources that have come to rely on the flexibility this alternative provides. We solicit comment on any such impacts and whether such impacts warrant adding a different compliance alternative that would result in less risk than the 0.9 Mg/yr benzene limit compliance option. If a commenter suggests a different compliance alternative, the commenter should explain, in detail, what that alternative would be, how it would work and how it would reduce risk.

ii. Ample Margin of Safety

We next considered whether this revised standard (existing MACT plus removal of 0.9 Mg/yr benzene compliance option) provides an ample margin of safety. In this analysis, we investigated available emissions control options that might reduce the risk associated with emissions from the source category and considered this information along with all of the health risks and other health information considered in the risk acceptability determination.

For glycol dehydrators, we considered the addition of a second control device in the same manner that was discussed in the floor evaluation in section VII.B.1 above. The cost effectiveness associated with that option would be $167,200/Mg, which we believe is too high to require additional controls on glycol dehydrators.

Similarly, we considered the addition of a second control device to the required MACT floor control device (cost effectiveness of $18,300/Mg). Similar to our discussion of beyond-the-MACT-floor controls for glycol dehydrators in section VII.B.1 of this preamble, the incremental cost to add a second control device for storage vessels would be approximately 20 times higher than the MACT floor cost effectiveness, or $366,000/Mg. We do not believe this cost effectiveness is reasonable.

For leak detection, we considered implementation of LDAR programs that are more stringent than the current standards. An assessment performed for various LDAR options under the NSPS in section VI.B.4.b of this preamble yielded the lowest cost effectiveness of $5,170/Mg ($4,700/ton) for control of VOC for the options evaluated. A LDAR program to control HAP would involve similar costs for equipment, labor, etc., to those considered in the NSPS assessment, but since there is approximately 20 times less HAP than VOC present in material handled in regulated equipment, the cost effectiveness to control HAP would be approximately 20 times greater (*i.e.*, $100,000/Mg) for HAP, which we believe is not reasonable.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the high cost effectiveness of the options identified, we propose that the existing MACT standards, with the removal of the 1 tpy benzene limit compliance option from the glycol dehydrator standards, provide an ample margin of safety to protect public health.

While we are proposing that the oil and natural gas production MACT standards (with the removal of the alternative compliance option of 1 tpy benzene limit) provide an ample margin of safety to protect public health, we are concerned about the estimated facility-wide risks identified through these screening analyses. As described previously, the highest estimated facility-wide cancer risks are mostly due to emissions from oil fired boilers and RICE. Both of these sources are regulated under other source categories and we anticipate that emission reductions from those sources will occur as standards for those source categories are implemented.

3. What are the results and proposed decisions from the risk review for the Natural Gas Transmission and Storage source category?

a. Results of the Risk Assessments and Analyses

We conducted an inhalation risk assessment for the Natural Gas Transmission and Storage source category. We also conducted an assessment of facility-wide risk and performed a demographic analysis of population risks. Details of the risk assessments and analyses can be found in the residual risk documentation, which is available in the docket for this action.

i. Inhalation Risk Assessment Results

Table 5 provides an overall summary of the results of the inhalation risk assessment. For informational purposes and to examine the potential for any EJ issues that might be associated with each source category, we performed a demographic analysis of population risks.

TABLE 5—NATURAL GAS TRANSMISSION AND STORAGE INHALATION RISK ASSESSMENT RESULTS

Number of Facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at risk ≥ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]		Maximum off-site acute noncancer HQ [5]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
321	[3] 30–90	[3] 30–90	[3] 2,500	[3] 0.0003–0.001	0.4	0.8	HQ_{REL} = 5 (benzene) HQ_{AEGL-1} = 0.2 (chlorobenzene)

[1] Number of facilities evaluated in the risk analysis.
[2] Estimated maximum individual excess lifetime cancer risk.
[3] The EPA IRIS assessment for benzene provides a range of equally-plausible URE (2.2E–06 to 7.8E–06 per ug/m^3), giving rise to ranges for the estimates of cancer MIR and cancer incidence. Estimated population values are not scalable with benzene URE range, but would be lower using the lower end of the URE range.
[4] Maximum TOSHI. The target organ with the highest TOSHI for the Natural Gas Transmission and Storage source category is the immune system.
[5] The maximum estimated acute exposure concentration was divided by available short-term dose-response values to develop an array of HQ values.

As shown in Table 5 above, the results of the inhalation risk assessment performed using actual emissions data indicate the maximum lifetime individual cancer risk could be as high as 90-in-1 million, (30-in-1 million based on the lower end of the benzene URE range), with benzene as the major contributor to the risk. The total estimated cancer incidence from the source category is 0.001 excess cancer cases per year (0.0003 excess cancer cases per year based on the lower end of the benzene URE range), or one case in every polycyclic organic matter 1,000 years. Approximately 2,500 people are estimated to have cancer risks at or above 1-in-1 million as a result of the emissions from 15 facilities (use of the lower end of the benzene URE range would further reduce this population estimate). The maximum chronic noncancer TOSHI value for the source category could be up to 0.4 from emissions of benzene, indicating no significant potential for chronic noncancer impacts.

As explained above in section VII.C.1.b, our analysis of potential differences between actual emission levels and emissions allowable under the natural gas transmission and storage MACT standard indicate that MACT-allowable emission levels may be up to 50 times greater than actual emission levels at some sources. However, because some sources are emitting at the level allowed under the current NESHAP, the risk results from the inhalation risk assessment indicate the maximum lifetime individual cancer risk would still be 90-in-1 million (30-in-1 million based on the lower end of the benzene URE range), based on both actual and allowable emission levels, and the maximum chronic noncancer TOSHI value could be as high as 0.8 at the MACT-allowable emissions level.

ii. Facility-Wide Risk Assessment Results

A facility-wide risk analysis was also conducted based on actual emissions levels. Table 6 below displays the results of the facility-wide risk assessment. For detailed facility-specific results, see Table 2 of Appendix 6 of the risk document in the docket for this rulemaking.

TABLE 6—NATURAL GAS TRANSMISSION AND STORAGE FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of Facilities Analyzed	321
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	[1] 200
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	3
Number of facilities at which the Natural Gas Transmission and Storage source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	1
Number of facilities with facility-wide individual cancer risk of 1-in-1 million or more	74
Number of facilities at which the Natural Gas Transmission and Storage source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	10
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	80
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	30
Number of facilities at which the Natural Gas Transmission and Storage source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

[1] We note that the MIR would be 100-in-1 million if the CIIT URE for formaldehyde were used instead of the IRIS URE.

The facility-wide MIR from all HAP emissions at any facility that contains sources subject to the natural gas transmission and storage MACT standards is estimated to be 200-in-1 million, based on actual emissions. Of the 321 facilities included in this analysis, three have facility-wide MIR of 100-in-1 million or greater. The facility-wide MIR is 200-in-1 million at two of these facilities, driven by formaldehyde

from RICE.[37] Another facility has a facility-wide risk of 100-in-1 million, with 90 percent of the risk attributed to natural gas transmission and storage. There are 74 facilities with facility-wide MIR of 1-in-1 million or greater. Of these facilities, 10 have natural gas transmission and storage operations that contribute greater than 50 percent to the facility-wide risks. As discussed above, we are proposing MACT standards for benzene emissions from small glycol dehydrators in this action. These standards would reduce the risk from benzene emissions at facilities with natural gas transmission and storage operations. The facility-wide cancer risks at the facilities with risks of 1-in-1 million or more are primarily driven by formaldehyde emissions from RICE, which will be assessed in a future RTR for that category.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be 80, based on actual emissions. Of the 321 facilities included in this analysis, 30 have facility-wide maximum chronic noncancer TOSHI values greater than 1. Of these facilities, none had natural gas transmission and storage operations that contributed greater than 50 percent to these facility-wide risks. The chronic noncancer risks at these facilities are primarily driven by acrolein emissions from RICE.

iii. Demographic Risk Analysis Results

The results of the demographic analyses performed to investigate the distribution of cancer risks at or above 1-in-1 million among the surrounding population are summarized in Table 7 below. These results, for various demographic groups, are based on actual emissions levels for the population living within 50 km of the facilities.

TABLE 7—NATURAL GAS TRANSMISSION AND STORAGE DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to . . .	
		Source category HAP emissions	Facility-wide HAP emissions
Total Population	285,000,000	2,500	99,000
Race by Percent			
White	75	92	58
All Other Races	25	8	42
Race by Percent			
White	75	92	58
African American	12	6	40
Native American	0.9	0.1	0.2
Other and Multiracial	12	1	2
Ethnicity by Percent			
Hispanic	14	1	2
Non-Hispanic	86	99	98
Income by Percent			
Below Poverty Level	13	17	20
Above poverty level	87	83	80
Education by Percent			
Over 25 and without High School Diploma	13	20	15
Over 25 and with a High School Diploma	87	80	85

The results of the Natural Gas Transmission and Storage source category demographic analysis indicate that there are approximately 2,500 people exposed to a cancer risk at or above 1-in-1 million due to emissions from the source category, including an estimated 8 percent that are classified as minority (listed as "All Other Races" in Table 7 above). Of the 2,500 people with estimated cancer risks at or above 1-in-1 million from the source category, 17 percent are in the "Below Poverty Level" demographic group, and 20 percent are in the "Over 25 and without High School Diploma" demographic group, results which are 4 and 7 percentage points higher, respectively, than the percentages for these demographic groups across the United States. The percentages for the other demographic groups are lower than their respective nationwide percentages. The table also shows that there are approximately 99,000 people exposed to an estimated cancer risk at or above 1-in-1 million due to facility-wide emissions, including an estimated 42 percent that are classified as minority ("All Other Races" in Table 7 above). Of the 99,000 people with estimated cancer risk at or above 1-in-1 million from facility-wide emissions, 40 percent are in the "African American" demographic group, 20 percent are in the "Below Poverty Level" demographic group, and 15 percent are in the "Over 25 and without High School Diploma" demographic group, results which are 28, 7 and 2 percentage points higher, respectively, than the percentages for these demographic groups across the United States. The percentages for the other demographic groups are equal to

[37] We note that there is an ongoing IRIS reassessment for formaldehyde, and that future RTR risk assessments will use the cancer potency for formaldehyde that results from that reassessment. As a result, the current results may not match those of future assessments.

or lower than their respective nationwide percentages.

b. What are the proposed risk decisions for the Natural Gas Transmission and Storage source category?

i. Risk Acceptability

In the risk analysis we performed for this source category, pursuant to CAA section 112(f)(2), we considered the available health information—the MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer hazard; the extent of noncancer risks; the potential for adverse environmental effects; distribution of risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the Natural Gas Transmission and Storage source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be as high as 90-in-1 million due to actual and allowable emissions (30-in-1 million, based on the lower end of the benzene URE range). These risks are near 100-in-1 million, which is the presumptive limit of acceptability. On the other hand, the risk analysis shows low cancer incidence (1 case in every 1,000 years), low potential for adverse environmental effects or human health multi-pathway effects and that chronic and acute noncancer health impacts are unlikely. We conclude that acute noncancer health impacts are unlikely for reasons similar to those described in section VII.C.2.b.i of this preamble.

Our additional analysis of facility-wide risks showed that, among three facilities with maximum facility-wide cancer risk of 100-in-1 million or greater, one facility has a facility-wide cancer risk of 100-in-1 million, with 90 percent of the risk attributed to natural gas and transmission and storage. There are 30 facilities with a maximum chronic noncancer TOSHI greater than 1, but natural gas transmission and storage operations did not drive this risk.

In determining whether risk is acceptable, we considered the available health information, as described above. In this case, because the MIR is approaching, but still less than 100-in-1 million risk, and because a number of other factors indicate relatively low risk concern (*e.g.*, low cancer incidence, low potential for adverse environmental effects or human health multi-pathway effects, chronic and acute noncancer health impacts unlikely), we are proposing to determine that the risks are acceptable.

ii. Ample Margin of Safety

We next considered whether the existing MACT standard provides an ample margin of safety. In this analysis, we investigated available emissions control options that might reduce the risk associated with emissions from the source category and considered this information, along with all of the health risks and other health information considered in the risk acceptability determination. The estimated MIR of 90-in-1 million discussed above is driven by the 0.9 Mg/year benzene limit compliance alternative for the glycol dehydrator MACT standard in the current NESHAP. Removal of this compliance alternative would lower the MIR for the source category to 20-in-1 million. We, therefore, considered removing this compliance alternative as an option for reducing risk and assessed the cost of such alternative. Without the compliance alternative, affected glycol dehydrators (*i.e.*, those units with annual average benzene emissions of 0.9 Mg/yr or greater and an annual average natural gas throughput of 283,000 scmd or greater) must demonstrate compliance with the 95-percent control requirement, which we believe can be shown with their existing control devices in most cases, although, in some instances, installation of a different or an additional control may be necessary.

In section VII.B.1 above. we discuss the costs for requiring controls on currently unregulated "small glycol dehydrators," which are similar, in operation and type of emission controls, to the dehydrators subject to the current MACT ("large dehydrators"). The HAP cost effectiveness determined for small dehydrators at the floor level of control was $1,650/Mg. Although control methodologies are similar for large and small dehydrators, we expect that the costs for controls on large units could be as much as twice as high as for small units because of the large gas flow being processed. However, we also expect that the amount of HAP emission reduction for the large dehydrators, in general, to be as much as, or more than, the amount achieved by small dehydrators. In light of the above, we do not expect the cost effectiveness of the control device needed to meet the 95-percent control requirement for large dehydrators to exceed $3,300/Mg (*i.e.*, twice the cost effectiveness for small dehydrators), which we consider to be reasonable.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the reasonable cost effectiveness of the option identified, we propose that the existing MACT standards, with the removal of the 0.9 Mg benzene limit compliance option from the glycol dehydrator standards, provide an ample margin of safety to protect public health.

Pursuant to CAA section 112(f)(4), we are proposing that this change (*i.e.*, removal of the 0.9 Mg/yr compliance alternative) apply 90 days after its effective date. We are requesting comment on whether or not there is sufficient time for the large dehydrators that have been relying on this compliance alternative to come into compliance with the 95-percent control requirement or if additional time is needed. See CAA section 112(f)(4)(A).

We recognize that our proposal to remove the one-ton compliance alternative for the 95-percent control glycol dehydrator MACT standard could have negative impacts on some sources that have come to rely on the flexibility this alternative provides. We solicit comment on any such impacts and whether such impacts warrant adding a different compliance alternative that would result in less risk than the 0.9 Mg/yr benzene limit compliance option. If a commenter suggests a different compliance alternative, the commenter should explain, in detail, what that alternative would be, how it would work, and how it would reduce risk.

As described above, we are proposing that the natural gas transmission and storage MACT standards (with the removal of the 0.9 Mg/yr benzene limit compliance option) provide an ample margin of safety to protect public health. We recognize that one facility has a facility-wide cancer risk of 100-in-1 million, with 90 percent of the risk attributed to natural gas transmission and storage. This risk is driven by benzene emissions from glycol dehydrators and is being addressed by our proposed revision to the Natural Gas Transmission and Storage NESHAP (removal of the 0.9 Mg/yr benzene limit compliance option). As previously mentioned, two facilities have facility-wide MIR of 200-in-1 million, driven by formaldehyde from RICE. Emissions from RICE are regulated under another source category and will be assessed under a future RTR for that category.

D. How did we perform the technology review and what are the results and proposed decisions?

1. What was the methodology for the technology review?

Our technology review is focused on the identification and evaluation of "developments in practices, processes, and control technologies" since the promulgation of the MACT standards for the two oil and gas source categories. If a review of available information identifies such developments, then we conduct an analysis of the technical feasibility of requiring the implementation of these developments, along with the impacts (costs, emission reductions, risk reductions, etc.). We then make a decision on whether it is necessary to amend the regulation to require these developments.

Based on specific knowledge of each source category, we began by identifying known developments in practices, processes and control technologies. For the purpose of this exercise, we considered any of the following to be a "development":

- Any add-on control technology or other equipment that was not identified and considered during MACT development;
- Any improvements in add-on control technology or other equipment (that was identified and considered during MACT development) that could result in significant additional emission reduction;
- Any work practice or operational procedure that was not identified and considered during MACT development; and
- Any process change or pollution prevention alternative that could be broadly applied that was not identified and considered during MACT development.

In addition to looking back at practices, processes or control technologies reviewed at the time we developed the MACT standards, we reviewed a variety of sources of data to aid in our evaluation of whether there were additional practices, processes or controls to consider. One of these sources of data was subsequent air toxics rules. Since the promulgation of the MACT standards for the source categories addressed in this proposal, the EPA has developed air toxics regulations for a number of additional source categories. We reviewed the regulatory requirements and/or technical analyses associated with these subsequent regulatory actions to identify any practices, processes and control technologies considered in these efforts that could possibly be applied to emission sources in the source categories under this current RTR review.

We also consulted the EPA's RBLC. The terms "RACT," "BACT," and "LAER" are acronyms for different program requirements under the CAA provisions addressing the NAAQS. Control technologies classified as RACT, BACT or LAER apply to stationary sources depending on whether the source exists or is new and on the size, age and location of the facility. The BACT and LAER (and sometimes RACT) are determined on a case-by-case basis, usually by state or local permitting agencies. The EPA established the RBLC to provide a central database of air pollution technology information (including technologies required in source-specific permits) to promote the sharing of information among permitting agencies and to aid in identifying future possible control technology options that might apply broadly to numerous sources within a category or apply only on a source-by-source basis. The RBLC contains over 5,000 air pollution control permit determinations that can help identify appropriate technologies to mitigate many air pollutant emission streams. We searched this database to determine whether any practices, processes or control technologies are included for the types of processes used for emission sources (*e.g.*, spray booths) in the source categories under consideration in this proposal.

We also consulted information from the Natural Gas STAR program. The Natural Gas STAR program is a flexible, voluntary partnership that encourages oil and natural gas companies to adopt cost effective technologies and practices that improve operational efficiency and reduce pollutant emissions. The program provides the oil and gas industry with information on new techniques and developments to reduce pollutant emissions from the various processes.

2. What are the results and proposed decisions from the technology review?

There are three types of emission sources covered by the two oil and gas NESHAP. These sources and the control technologies (including add-on control devices and process modifications) considered during the development of the MACT standards are: Glycol dehydrators (combustion devices, recovery devices, process modifications), storage vessels with the PFE (combustion devices, recovery devices) and equipment leaks (LDAR programs, specific equipment modifications). Dehydrators are addressed by both 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH, while equipment leaks and storage vessels with the PFE are only covered by subpart HH.

Since the promulgation of 40 CFR part 63, subpart HH, which established MACT standards to address HAP emissions from equipment leaks at gas processing plants, the EPA has developed LDAR programs that are more stringent than what is required in subpart HH. The most prevalent differences between these more stringent programs and subpart HH relate to the frequency of monitoring and the concentration which constitutes a "leak." We do consider these programs to represent a development in practices and evaluated whether to revise the MACT standards for equipment leaks at natural gas processing plants under subpart HH in light of this development.

An analysis was performed above in section VI.B.1 to assess the VOC reduction, costs and other impacts associated with these more stringent LDAR program options at natural gas processing plants. One option considered was to require compliance with 40 CFR part 60, subpart VVa instead of 40 CFR part 60, subpart VV (the current NSPS requirement for equipment leaks of VOC at natural gas processing plants), which changes the leak definition (based on methane) from 10,000 ppm to 500 ppm and requires monitoring of connectors. Because the current leak definition under NESHAP 40 CFR part 63, subpart HH is the same as that in NSPS subpart VV, and the ratio of VOC to HAP is approximately 20 to 1, we expect that the HAP reduction would be 1/20th of the VOC reduction under subpart VVa. The estimated incremental cost for that option was determined to be $3,340 per ton of VOC. Based on the 20-to-1 ratio, we estimate the incremental cost to control HAP at the subpart VVa level would be approximately $66,800 per ton of HAP ($73,480/Mg). Other options considered in section VI.B.1 of this preamble (and the incremental cost of each option for reducing HAP) are as follows: The use of an optical gas imaging camera monthly with an annual EPA Method 21 check ($129,000 per ton of HAP/$143,600 per Mg, if purchasing the camera; $93,000 per ton of HAP/ $103,300 per Mg, if renting the camera); monthly optical gas imagining alone; and annual optical gas imaging.[38] In

[38] As stated above in section VI.B.1, emissions for the two options using the optical gas imaging camera alone cannot be quantified and, therefore, no cost effectiveness values were determined.

light of the above, we do not believe that the additional costs of these programs are justified.

In addition to the plant-wide evaluations, a component analysis was also evaluated at gas processing plants for the 40 CFR part 60, subpart VVa-level of control (option 1 considered in section VI.B.1).[39] That assessment shows that the subpart VVa-level of control for connectors has an incremental cost effectiveness of $4,360 per ton for VOC for connectors and $144 per ton for VOC for valves. This means the incremental cost to control HAP would be approximately $87,200 per ton ($96,900/Mg) for connectors and $2,880 per ton ($3,200/Mg) for valves. We do not believe the additional cost for the more stringent requirement for connectors is justified, but the additional cost for valves is justified. Therefore, we are proposing to revise the equipment leak requirements in 40 CFR part 63, subpart HH to lower the leak definition for valves to an instrument reading of at least 500 ppm as a result of our technology review.

Some of the practices, processes or control technologies listed by the Natural Gas STAR program applicable to the emission sources in these categories were not identified and evaluated during the original MACT development. While the Natural Gas STAR program does contain information regarding new innovative techniques that are available to reduce HAP emissions, they are not considered to have emission reductions higher than what is set by the original MACT. One control technology identified in the Natural Gas STAR program that would result in no HAP emissions from glycol dehydration units would be the replacement of a glycol dehydration unit with a desiccant dehydrator. This technology cannot be used for natural gas operations with gas streams having high temperature, high volume, and low pressure. Due to the limitations posed by these conditions, we do not consider desiccant dehydrators as MACT.

For storage vessels, the applicable technologies identified by the Gas STAR program, which are evaluated above for proposal under NSPS in section VI.B.4, are similar to the cover and control technologies currently required for storage vessels under the existing MACT. Therefore, these technologies would not result in any further emissions reductions than what is achieved by the original MACT.

[39] Because optical gas imaging is used to view several pieces of equipment at a facility at once to survey for leaks, options involving imaging are not amenable to a component by component analysis.

Our review of the RBLC did not identify any practices, processes and control technologies applicable to the emission sources in these categories that were not identified and evaluated during the original MACT development. In light of the above, we are not proposing any revisions to the existing MACT standards for storage vessels pursuant to section 112(d)(6) of the CAA.

E. What other actions are we proposing?

1. Combustion Control Device Testing

As explained below in section VII.E.2, under our proposal, performance testing would be required initially and every 5 years for non-condenser control devices. However, for certain enclosed combustion control devices, we are proposing to allow, as an alternative to on-site testing, a performance test conducted by a control device manufacturer in accordance with the procedures provided in this proposal. We propose to allow a unit whose model meets the proposed performance criteria to claim a BTEX or HAP destruction efficiency of 98 percent at the facility. This value is lower than the 99.9-percent destruction efficiency required in the manufacturers' test due to variations between the test fuel specified and the gas streams combusted at the actual facility. A source subject to the small dehydrator BTEX limit would use the 98-percent destruction efficiency to calculate their dehydrator's BTEX emissions for the purpose of demonstrating compliance. For the 95-percent control MACT standard, a control device matching the tested model would be considered to meet that requirement. Once a device has been demonstrated to meet the proposed performance criteria (and, therefore, is assigned a 98-percent destruction efficiency), installation of a unit matching the tested model at a facility would require no further performance testing (*i.e.*, periodic tests would not be required every 5 years).

We are proposing this alternative to minimize issues associated with performance testing of certain combustion control devices. We believe that testing units that are not configured with a distinct combustion chamber present several technical issues that are more optimally addressed through manufacturer testing, and once these units are installed at a facility, through periodic inspection and maintenance in accordance with manufacturers' recommendations. One issue is that an extension above certain existing combustion control device enclosures will be necessary to get adequate clearance above the flame zone. Such extensions can more easily be configured by the manufacturer of the control device rather than having to modify an extension in the field to fit devices at every site. Issues related to transporting, installing and supporting the extension in the field are also eliminated through manufacturer testing. Another concern is that the pitot tube used to measure flow can be altered by radiant heat from the flame such that gas flow rates are not accurate. This issue is best overcome by having the manufacturer select and use the pitot tube best suited to their specific unit. For these reasons, we believe the manufacturers' test is appropriate for these control devices with ongoing performance ensured by periodic inspection and maintenance.

This proposed alternative does not apply to flares, as defined in 40 CFR 63.761 and 40 CFR 63.1271, which must demonstrate compliance by meeting the design and operation requirements in 40 CFR 63.11(b), 40 CFR 63.772(e)(2) and 40 CFR 63.1282(d)(2). It also would not apply to thermal oxidizers having a combustion chamber/firebox where combustion temperature and residence time can be measured during an on-site performance test and are valid indicators of performance. These thermal oxidizers do not present the issues described above relative to on-site performance testing and, therefore, do not need an alternative testing option. The proposed alternative would, therefore, apply to enclosed combustion control devices except for these thermal oxidizers.

In conjunction with the proposed manufacturer testing alternative, we are proposing to add a definition for flare to clarify that flares, as referenced in the NESHAP (and to which the proposed testing alternative does not apply), refers to a thermal oxidation system with an open flame (*i.e.*, without enclosure). Accordingly, any thermal oxidation system that does not meet the proposed flare definition would be considered an enclosed combustion control device.

We estimate that there are many existing facilities currently using enclosed combustion control devices that would be required to either conduct an on-site performance test or install and operate a control device tested by the manufacturer under our proposal. Given the estimated number of these combustion control devices in use, the time required for manufacturers to test and manufacture such units, we are proposing that existing sources have up to 3 years from the date of the final rules' publication date to comply with

the initial performance testing requirements.

2. Monitoring, Recordkeeping and Reporting

We are proposing to make changes to the monitoring requirements described below to address issues we have identified through a monitoring sufficiency review performed during the RTR process. First, we are including calibration procedures associated with parametric monitoring requirements in the existing NESHAP. The NESHAP require parametric monitoring of control device parameters (*e.g.*, temperatures or flowrate monitoring), but did not include information on calibration or included inadequate information on calibration of monitoring devices. Therefore, we are specifying the calibration requirements for temperature and flow monitors that the NESHAP currently lacks.

In addition, under the current NESHAP, a design analysis can be used in lieu of performance testing to demonstrate compliance and establish operating parameter limits. We are proposing to allow the use of the design evaluation alternative only when the control device being used is a condenser. The design evaluation option is appropriate for condensers because their emissions can be accurately predicted using readily available physical property information (*e.g.*, vapor pressure data and condensation calculations). In those cases, one would not need to conduct emissions testing to determine actual emissions to demonstrate compliance with the MACT standard. For example, a requirement that "the temperature at the outlet of the condenser shall be maintained at 50° Fahrenheit below the condensation temperature calculated for the compound of interest using the reference equation" (*e.g.*, National Institute of Standards and Technology Chemistry WebBook at *http://webbook.nist.gov/chemistry/*) is adequate to assure proper operation of the condenser and, therefore, compliance with the required emission standard.

For other types of control technologies, such as carbon adsorption systems and enclosed combustion devices,[40] the ability to predict emissions depends on data developed by the vendor and such data may not reliably result in an accurate prediction of emissions from a specific facility. There are variables (*e.g.*, air to fuel ratios and waste constituents for combustion; varying organic concentrations, constituents and capacity issues, including break-through for carbon adsorption) that make theoretical predictions less reliable. The effects of these site-specific variables on emissions are not easily predictable and establishing monitoring conditions (*e.g.*, combustion temperature, vacuum regeneration) based on vendor data will likely not account for those variables. Therefore, we propose to eliminate the design evaluation alternative for non-condenser controls.

For non-condenser controls (and condensers not using the design analysis option), in addition to the initial compliance testing, we are proposing that performance tests be conducted at least once every 5 years and whenever sources desire to establish new operating limits. Under the current NESHAP, a performance test is only conducted in two instances: (1) As an alternative to a design analysis for their compliance demonstration and identification of operating parameter ranges and (2) as a requirement to resolve a disagreement between the EPA and the owner or operator regarding the design analysis. The current NESHAP do not require additional performance testing beyond these two cases (*i.e.*, there is no periodic testing requirement). As mentioned above, we are proposing to remove the design evaluation option for non-condenser controls. For non-condenser controls (and condensers not using the design analysis option), the proposed periodic testing would ensure compliance with the emission standards by verifying that the control device is meeting the necessary HAP destruction efficiency determined in the initial performance test. As discussed above in section VII.E.1, we are proposing that combustion control devices tested under the manufacturers' procedure are not required to conduct periodic testing. In addition, we are also proposing that combustion control devices that can demonstrate a uniform combustion zone temperature meeting the required control efficiency during the initial performance test are exempt from periodic testing. The requirement for continuous monitoring of combustion zone temperature is an accurate indicator of control device performance and eliminates the need for future testing.

The current NESHAP (40 CFR 63.771(d) and 40 CFR 63.1281(d)) require operating an enclosed combustion device at a minimum residence time of 0.5 seconds at a minimum temperature of 760 degrees Celsius. We are proposing to remove the residence time requirement. The residence time requirement is not needed because the compliance demonstration made during the performance test is sufficient to ensure that the combustion device has adequate residence time to ensure the needed destruction efficiency. Therefore, we are proposing to remove the residence time requirement.

We are also clarifying at 40 CFR 63.773(d)(3)(i) and 40 CFR 63.1283(d)(3)(i) for thermal vapor incinerators, boilers and process heaters, that the temperature sensor shall be installed at a location representative of the combustion zone temperature. Currently, the regulation requires that the temperature sensor be installed at a location "downstream of the combustion zone" because we had thought that the temperature downstream would be representative of combustion zone temperature. We have now learned that may or may not be the case. We are, therefore, proposing to amend this provision to more accurately reflect the intended requirement.

Next, consistent with revisions for SSM, we've revised 40 CFR 63.771(d)(4)(i) and 40 CFR 63.1281(d)(4)(i), except when maintenance or repair on a unit cannot be completed without a shutdown of the control device.

Also, we've updated the criteria for prior performance test results that can be used to demonstrate compliance in lieu of conducting a performance test. These updates ensure that data for determining compliance are accurate, up-to-date, and truly representative of actual operating conditions.

In addition, we are proposing to revise the temperature monitoring device minimum accuracy criteria in 40 CFR 63.773(d)(3)(i) to better reflect the level of performance that is required of the temperature monitoring devices. We believe that temperature monitoring devices currently used to meet the requirements of the NESHAP can meet the proposed revised criteria without modification.

Also, we are proposing to revise the calibration gas concentration for the no detectable emissions procedure applicable to closed vent systems in 40 CFR 63.772(c)(4)(ii) from 10,000 ppmv to 500 ppmv methane to be consistent with the leak threshold of 500 ppmv in 40 CFR part 63, subpart HH. The current calibration level is inconsistent with achieving accurate readings at the level necessary to demonstrate there are no detectable emissions.

[40] The design analysis alternative in the existing MACT does not apply to flares. As previously mentioned, the existing MACT provides separate design and operation requirements for flares.

Also, we are proposing recordkeeping and reporting requirements for carbon adsorption systems. The current NESHAP require the replacement of all carbon in the carbon adsorption system with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon system, but provide no recordkeeping or reporting requirement to document and assure compliance with this standard. We believe that maintaining some sort of log book is a reasonable alternative combined with a requirement to report instances when specified practices are not followed. Therefore, the proposed rule adds reporting and recordkeeping requirements for establishing a schedule and maintaining logs of carbon replacement.

Finally, as noted above in section VII.B.1, we are proposing a BTEX emissions limit for small glycol dehydration unit process vents. For the compliance demonstration, we propose that parametric monitoring of the control device be performed. We believe that parametric monitoring is adequate for glycol dehydrators in these two source categories because temperature monitoring, whether it be to verify proper condenser or combustion device operation, is a reliable indicator of performance for reducing organic HAP emissions. We also considered the use of a continuous emissions monitoring system (CEMS) to monitor compliance. However, for glycol dehydrators in the oil and natural gas sector, the necessary electricity, weather-protective enclosures and daily staffing are not usually available. We, therefore, question the technical feasibility of operating a CEMS correctly in this sector. We request comment on the practicality of including provisions in the final rule for a CEMS to monitor BTEX emissions for small glycol dehydration units.

3. Startup, Shutdown, Malfunction

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA*, 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied, 130 S. Ct. 1735 (U.S. 2010)*. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that is part of a regulation, commonly referred to as the *General Provisions Rule*, that the EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

We are proposing the elimination of the SSM exemption in the two oil and gas NESHAP. Consistent with *Sierra Club* v. *EPA*, the EPA is proposing to apply the standards in these NESHAP at all times. In addition, we are proposing to revise 40 CFR 63.771(d)(4)(i) and 40 CFR 63.1281(d)(4)(i) to remove the provision allowing shutdown of the control device during maintenance or repair. We are also proposing several revisions to the General Provisions applicability table for the MACT standard. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop a SSM plan. We are also proposing to eliminate or revise certain recordkeeping and reporting requirements related to the SSM exemption. The EPA has attempted to ensure that we have not included in the proposed regulatory language any provisions that are inappropriate, unnecessary or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

In proposing the MACT standards in these rules, the EPA has taken into account startup and shutdown periods. We believe that operations and emissions do not differ from normal operations during these periods such that it warrants a separate standard. Therefore, we have not proposed different standards for these periods.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 63.2). The EPA has determined that malfunctions should not be viewed as a distinct operating mode and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 112(d) standards, which, once promulgated, apply at all times. In *Mossville Environmental Action Now* v. *EPA*, 370 F.3d 1232, 1242 (D.C. Cir. 2004), the Court upheld as reasonable, standards that had factored in variability of emissions under all operating conditions. However, nothing in CAA section 112(d) or in case law requires that the EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. See *Weyerhaeuser* v. *Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978), ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by "uncontrollable acts of third parties," such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.").

Further, it is reasonable to interpret CAA section 112(d) as not requiring the EPA to account for malfunctions in setting emissions standards. For example, we note that CAA section 112 uses the concept of "best performing" sources in defining MACT, the level of stringency that major source standards must meet. Applying the concept of "best performing" to a source that is malfunctioning presents significant difficulties. The goal of best performing sources is to operate in such a way as to avoid malfunctions of their units.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take malfunctions into account in setting CAA section 112(d) standards for oil and natural gas production facility and natural gas transmission and storage operations. As noted above, by definition, malfunctions are sudden and unexpected events, and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in each source category. Moreover, malfunctions can also vary in frequency, degree and duration, further complicating standard setting.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause or contribute to an exceedance of the relevant emission standard. (See, *e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (September 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (February 15, 1983)). The EPA is, therefore, proposing to add to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions in both of the MACT standards addressed in this proposal. See 40 CFR 63.761 for sources subject to the oil and natural gas production MACT standards, or 40 CFR 63.1271 for sources subject to the natural gas transmission and storage MACT standards (defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; a source subject to the oil and natural gas production facilities or natural gas transmission MACT standards must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.762 and a source subject to the natural gas transmission and storage facilities MACT standards must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.1272. (See 40 CFR 22.24.) The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of evidence that excess emissions "[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *." The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.762 for sources subject to the oil and natural gas production facilities MACT standards or 40 CFR 63.1272 for sources subject to the natural gas transmission and storage facilities MACT standards and to prevent future malfunctions. For example, the source must prove by a preponderance of evidence that "[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *" and that "[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *." In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.77).

4. Applicability and Compliance

a. Calculating Potential To Emit (PTE)

We are proposing to amend section 40 CFR 63.760(a)(1)(iii) to clarify that sources must use a glycol circulation rate consistent with the definition of PTE in 40 CFR 63.2 in calculating emissions for purposes of determining PTE. Affected parties have misinterpreted the current language concerning measured values or annual average to apply to a broader range of parameters than was intended. Those qualifiers were meant to apply to gas characteristics that are measured, such as inlet gas composition, pressure and temperature rather than process equipment settings. That means that the circulation rate used in PTE determinations shall be the maximum under its physical and operational design.

In addition to the proposed changes described above, we are seeking comment on several PTE related issues. According to the data available to the Administrator, when 40 CFR part 63, subpart HH was promulgated, the level of HAP emissions was predominantly driven by natural gas throughput (*i.e.*, HAP emissions went up or down in concert with natural gas throughput). Since promulgation, we have learned that there is not always a direct correlation between HAP emissions and natural gas throughput. We have received information suggesting that, in some cases, HAP emissions can increase despite decreasing natural gas throughput due to changes in gas composition. We are asking for comment regarding the likelihood of this occurrence and data demonstrating the circumstances where it occurs. In light of the potential issue, we are asking for comment regarding the addition of provisions in the NESHAP to require area sources to recalculate their PTE to confirm that they are indeed area sources and whether that calculation should be performed on an annual or biannual basis to verify that changes in gas composition have not increased their emissions.

b. Definition of Facility and Applicability Criteria

Subpart HH of 40 CFR part 63 (section 63.760(a)(2)) currently defines facilities as those where hydrocarbon liquids are processed, upgraded or stored prior to the point of custody transfer or where natural gas is processed, upgraded or stored prior to entering the Natural Gas Transmission and Storage source category. We are proposing to remove the references to "point of custody transfer" and "transmission and storage source categories" from the definition because the operations performed at a site sufficiently define a facility and the scope of the subpart is specified already under 40 CFR 63.760. In addition, we are removing the custody transfer reference from the applicability criteria in 40 CFR 63.760(a)(2). Since hydrocarbon liquids can pass through several custody transfer points between the well and the final destination, the custody transfer criteria is not clear enough. We are, therefore, proposing to replace the reference to "point of custody transfer" with a more specific description of the point up to which the subpart applies (*i.e.*, the point where hydrocarbon liquids enter either the organic liquids distribution or petroleum refineries source categories) and exclude custody transfer from that criteria. We believe this change eliminates ambiguity and is consistent with the oil and natural gas production-specific provisions in the organic liquids distribution MACT.

5. Other Proposed Changes To Clarify These Rules

The following lists additional changes to the NESHAP we are proposing. This list includes proposed rule changes that address editorial corrections and plain language revisions:

- Revise 40 CFR 63.769(b) to clarify that the equipment leak provisions in 40 CFR part 63, subpart HH do not apply to a source if that source is required to control equipment leaks under either 40 CFR part 63, subpart H or 40 CFR part 60, subpart KKK. The current 40 CFR 63.769(b), which states that subpart HH does not apply if a source meets the

requirements in either of the subparts mentioned above, does not clearly express our intent that such source must be implementing the LDAR provisions in the other 40 CFR part 60 or 40 CFR part 63 subparts to qualify for the exemption.

- Revise 40 CFR 63.760(a)(1) to clarify that an existing area source that increases its emissions to major source levels has up to the first substantive compliance date to either reduce its emissions below major source levels by obtaining a practically enforceable permit or comply with the applicable major source provisions of 40 CFR part 63, subpart HH. We have revised the second to last sentence in 40 CFR 63.760(a)(1) by removing the parenthetical statement because it simply reiterates the last sentence of this section and is, therefore, unnecessary.
- Revise 40 CFR 63.771(d)(1)(ii) and 40 CFR 63.1281(d)(1)(ii) to clarify that the vapor recovery device and "other control device" described in those provisions refer to non-destructive control devices only.
- Revise the last sentence of 40 CFR 63.764(i) and 40 CFR 63.1274(g) to clarify the requirements following an unsuccessful attempt to repair a leak.
- Updated the e-mail and physical address for area source reporting in 40 CFR 63.775(c)(1).

VIII. What are the cost, environmental, energy and economic impacts of the proposed 40 CFR part 60, subpart OOOO and amendments to subparts HH and HHH of 40 CFR part 63?

We are presenting a combined discussion of the estimates of the impacts for the proposed 40 CFR part 60, subpart OOOO and proposed amendments to 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH. The cost, environmental and economic impacts presented in this section are expressed as incremental differences between the impacts of an oil and natural gas facility complying with the amendments to subparts HH and HHH and new standards under 40 CFR 60, subpart OOOO and the baseline, *i.e.*, the standards before these amendments. The impacts are presented for the year 2015, which will be the year that all existing oil and natural gas facilities will have to be in compliance, and also the year that will represent approximately 5 years of construction of new oil and natural gas facilities subject to the NSPS emissions limits. The analyses and the documents referenced below can be found in Docket ID Numbers EPA–HQ–OAR–2007–0877 and EPA–HQ–OAR–2002–0051.

A. What are the affected sources?

We expect that by 2015, the year when all existing sources will be required to come into compliance in the United States, there will be 97 oil and natural gas production facilities and 15 natural gas transmission and storage facilities with one or more existing glycol dehydration units. We also estimate that there will be an additional 329 (there are 47 facilities that already have an affected glycol dehydration unit) existing oil and natural gas production facilities with existing storage vessels that we expect to be affected by these final amendments. These facilities operate approximately 134 glycol dehydration units (115 in production and 19 in transmission and storage) and 1,970 storage vessels. Approximately 10 oil and natural gas production and two transmission and storage facilities would have new glycol dehydration units and 38 production facilities would have new dehydration units. We expect new production facilities would operate approximately 12 production glycol dehydration units and 197 storage vessels and new transmission and storage would operate approximately two glycol dehydration units.

Based on data provided by the United States Energy Information Administration, we anticipate that by 2015 there will be approximately 21,800 gas wellhead facilities, 790 reciprocating compressors, 30 centrifugal compressors, 14,000 pneumatic devices and 300 storage vessels subject to the new NSPS for VOC. Some of these affected facilities will be built at existing facilities and some at new greenfield facilities. Based on data limitations, we assume impacts are equal regardless of location.

There are about 21 glycol dehydration units with high enough HAP emissions that we believe cannot meet the emissions limit without using more than one control technique. In developing the cost impacts, we assume that they would require multiple controls. The controls for which we have detailed cost data are condensers and VRU, so we developed costs for both controls to develop what we consider to be a reasonable cost estimate for these facilities. This does not imply that we believe these facilities will specifically use a combination of a condenser and vapor recovery limit, but we do believe the combination of these control results is a reasonable estimate of cost.

B. How are the impacts for this proposal evaluated?

For these proposed Oil and Natural Gas Production and Natural Gas Transmission and Storage NESHAP amendments and NSPS, the EPA used two models to evaluate the impacts of the regulation on the industry and the economy. Typically, in a regulatory analysis, the EPA determines the regulatory options suitable to meet statutory obligations under the CAA. Based on the stringency of those options, the EPA then determines the control technologies and monitoring requirements that sources might rationally select to comply with the regulation. This analysis is documented in an engineering analysis. The selected control technologies and monitoring requirements are then evaluated in a cost model to determine the total annualized control costs. The annualized control costs serve as inputs to an Economic Impact Analysis model that evaluates the impacts of those costs on the industry and society as a whole.

The Economic Impact Analysis used the National Energy Modeling System (NEMS) to estimate the impacts of the proposed NSPS on the United States energy system. The NEMS is a publically-available model of the United States energy economy developed and maintained by the Energy Information Administration of the United States DOE and is used to produce the *Annual Energy Outlook*, a reference publication that provides detailed forecasts of the energy economy from the current year to 2035. The impacts we estimated included changes in drilling activity, price and quantity changes in the production and consumption of crude oil and natural gas and changes in international trade of crude oil and natural gas. We evaluated whether and to what extent the increased production costs imposed by the NSPS might alter the mix of fuels consumed at a national level. Additionally, we combined estimated emissions co-reductions of methane from the engineering analysis with NEMS analysis to estimate the net change in CO_2e GHG from energy-related sources.

C. What are the air quality impacts?

For the oil and natural gas sector NESHAP and NSPS, we estimated the emission reductions that will occur due to the implementation of the final emission limits. The EPA estimated emission reductions based on the control technologies selected by the engineering analysis. These emission reductions associated with the proposed amendments to 40 CFR part 63, subpart

HH and 40 CFR part 63, subpart HHH are based on the estimated population in 2008. Under the proposed limits for glycol dehydration units and storage vessels, we have estimated that the HAP emissions reductions will be 1,400 tpy for existing units subject to the proposed emissions limits.

For the NSPS, we estimated the emission reductions that will occur due to the implementation of the final emission limits. The EPA estimated emission reductions based on the control technologies selected by the engineering analysis. These emission reductions are based on the estimated population in 2015. Under the proposed NSPS, we have estimated that the emissions reductions will be 540,000 tpy VOC for affected facilities subject to the NSPS.

The control strategies likely adopted to meet the proposed NESHAP amendments and the proposed NSPS will result in concurrent control of HAP, methane and VOC emissions. We estimate that direct reductions in HAP, methane and VOC for the proposed rules combined total about 38,000 tpy, 3.4 million tpy and 540,000 tpy, respectively.

Under the final standards, new monitoring requirements are being added.

D. What are the water quality and solid waste impacts?

We estimated minimal water quality impacts for the proposed amendments and proposed NSPS. For the proposed amendments to the NESHAP, we anticipate that the water impacts associated with the installation of a condenser system for the glycol dehydration unit process vent would be minimal. This is because the condensed water collected with the hydrocarbon condensate can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with produced water for disposal, usually by reinjection.

Similarly, the water impacts associated with installation of a vapor control system either on a glycol dehydration unit or a storage vessel would be minimal. This is because the water vapor collected along with the hydrocarbon vapors in the vapor collection and redirect system can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with the produced water for disposal for reinjection.

There would be no water impacts expected for facilities subject to the proposed NSPS. Further, we do not anticipate any adverse solid waste impacts from the implementation of the proposed NESHAP amendments and the proposed NSPS.

E. What are the secondary impacts?

Indirect or secondary air quality impacts include impacts that will result from the increased electricity usage associated with the operation of control devices, as well as water quality and solid waste impacts (which were just discussed) that might occur as a result of these proposed actions. We estimate the proposed amendments to 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH will increase emissions of criteria pollutants due to the potential use of flares for the control of storage vessels. We do not estimate an increased energy demand associated with the installation of condensers, VRU or flares. The increases in criteria pollutant emissions associated with the use of flares to control storage vessels subject to existing source standards are estimated to be 5,500 tpy of CO_2, 16 tpy of carbon monoxide (CO), 3 tpy of NO_X, less than 1 tpy of particulate matter (PM) and 6 tpy total hydrocarbons. For storage vessels subject to new source standards, increases in secondary air pollutants are estimated to be less than 900 tpy of CO_2, 3 tpy of CO, 1 tpy of NO_X, 1 tpy of PM and 1 tpy total hydrocarbons.

In addition, we estimate that the secondary impacts associated with the pneumatic controller requirements to comply with the proposed NSPS would be about 22 tpy of CO_2, 1 tpy of NO_X and 3 tpy PM. For gas wellhead affected facilities, we estimate that the use of flares would result in increases in criteria pollutant emissions of about 990,000 tons of CO_2, 2,800 tpy of CO, 500 tpy of NO_X, 5 tpy of PM and 1,000 tpy total hydrocarbons.

F. What are the energy impacts?

Energy impacts in this section are those energy requirements associated with the operation of emission control devices. Potential impacts on the national energy economy from the rule are discussed in the economic impacts section. There would be little national energy demand increase from the operation of any of the control options analyzed under the proposed NESHAP amendments and proposed NSPS.

The proposed NESHAP amendments and proposed NSPS encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate that can be used on-site as fuel or reprocessed within the production process for sale. We estimated that the proposed standards will result in a net cost savings due to the recovery of salable natural gas and condensate. Thus, the final standards have a positive impact associated with the recovery of non-renewable energy resources.

G. What are the cost impacts?

The estimated total capital cost to comply with the proposed amendments to 40 CFR part 63, subpart HH for major sources in the Oil and Natural Gas Production source category is approximately $51.5 million. The total capital cost for the proposed amendments to 40 CFR part 63, subpart HHH for major sources in the Natural Gas Transmission and Storage source category is estimated to be approximately $370 thousand. All costs are in 2008 dollars.

The total estimated net annual cost to industry to comply with the proposed amendments to 40 CFR part 63, subpart HH for major sources in the Oil and Natural Gas Production source category is approximately $16 million. The total net annual cost for proposed amendments to 40 CFR part 63, subpart HHH for major sources in the Natural Gas Transmission and Storage source category is estimated to be approximately $360,000. These estimated annual costs include: (1) The cost of capital, (2) operating and maintenance costs, (3) the cost of monitoring, inspection, recordkeeping and reporting (MIRR) and (4) any associated product recovery credits. All costs are in 2008 dollars.

The estimated total capital cost to comply with the proposed NSPS is approximately $740 million in 2008 dollars. The total estimated net annual cost to industry to comply with the proposed NSPS is approximately $740 million in 2008 dollars. This annual cost estimate includes: (1) The cost of capital, (2) operating and maintenance costs and (3) the cost of MIRR. This estimated annual cost does not take into account any producer revenues associated with the recovery of salable natural gas and hydrocarbon condensates.

When revenues from additional product recovery are considered, the proposed NSPS is estimated to result in a net annual engineering cost savings overall. When including the additional natural gas recovery in the engineering cost analysis, we assume that producers are paid $4 per thousand cubic feet (Mcf) for the recovered gas at the wellhead. The engineering analysis cost analysis assumes the value of recovered condensate is $70 per barrel. Based on the engineering analysis, about 180,000,000 Mcf (180 billion cubic feet) of natural gas and 730,000 barrels of

condensate are estimated to be recovered by control requirements in 2015. Using the price assumptions, the estimated revenues from natural gas product recovery are approximately $780 million in 2008 dollars. This savings is estimated at $45 million in 2008 dollars.

Using the engineering cost estimates, estimated natural gas product recovery, and natural gas product price assumptions, the net annual engineering cost savings is estimated for the proposed NSPS at about $45 million in 2008 dollars. Totals may not sum due to independent rounding.

As the price assumption is very influential on estimated annualized engineering costs, we performed a simple sensitivity analysis of the influence of the assumed wellhead price paid to natural gas producers on the overall engineering annualized costs estimate of the proposed NSPS. At $4.22/Mcf, the price forecast reported in the 2011 Annual Energy Outlook in 2008 dollars, the annualized costs are estimated at about −$90 million, which would approximately double the estimate of net cost savings of the proposed NSPS. As indicated by this difference, EPA has chosen a relatively conservative assumption (leading to an estimate of few savings and higher net costs) for the engineering costs analysis. The natural gas price at which the proposed NSPS breaks-even from an estimated engineering costs perspective is around $3.77/Mcf. A $1/Mcf change in the wellhead natural gas price leads to about a $180 million change in the annualized engineering costs of the proposed NSPS. Consequently, annualized engineering costs estimates would increase to about $140 million under a $3/Mcf price or decrease to about −$230 million under a $5/Mcf price. For further details on this sensitivity analysis, please refer the regulatory impact analysis (RIA) for this rulemaking located in the docket.

H. What are the economic impacts?

The NEMS analysis of energy system impacts for the proposed NSPS option estimates that domestic natural gas production is likely to increase slightly (about 20 billion cubic feet or 0.1 percent) and average natural gas prices to decrease slightly ($0.04 per Mcf in 2008 dollars or 0.9 percent at the wellhead for onshore producers in the lower 48 states) for 2015, the year of analysis. This increase in production and decrease in wellhead price is largely a result of the increased natural gas and condensate recovery as a result of complying with the NSPS. Domestic crude oil production is not expected to change, while average crude oil prices are estimated to decrease slightly ($0.02/barrel in 2008 dollars or less than 0.1 percent at the wellhead for onshore producers in the lower 48 states) in the year of analysis, 2015. The NEMS-based analysis estimates in the year of analysis, 2015, that net imports of natural gas and crude will not change significantly.

Total CO_2e emissions from energy-related sources are expected to increase about 2.0 million metric tons CO_2e or 0.04 percent under the proposed NSPS, according to the NEMS analysis. This increase is attributable largely to natural gas consumption increases. This estimate does not include CO_2e reductions from the implementation of the controls; these reductions are discussed in more detail in the benefits section that follows.

We did not estimate the energy economy impacts of the proposed NESHAP amendments using NEMS, as the expected costs of the rule are not likely to have estimable impacts on the national energy economy.

I. What are the benefits?

The proposed Oil and Natural Gas NSPS and NESHAP amendments are expected to result in significant reductions in existing emissions and prevent new emissions from expansions of the industry. These proposed rules combined are anticipated to reduce 38,000 tons of HAP, 540,000 tons of VOC and 3.4 million tons of methane. These pollutants are associated with substantial health effects, welfare effects and climate effects. With the data available, we are not able to provide credible health benefit estimates for the reduction in exposure to HAP, ozone and PM (2.5 microns and less) ($PM_{2.5}$) for these rules, due to the differences in the locations of oil and natural gas emission points relative to existing information and the highly localized nature of air quality responses associated with HAP and VOC reductions.

This is not to imply that there are no benefits of the rules; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this industrial sector with the data currently available. In addition to health improvements, there will be improvements in visibility effects, ecosystem effects and climate effects, as well as additional product recovery.

Although we do not have sufficient information or modeling available to provide quantitative estimates for this rulemaking, we include a qualitative assessment of the health effects associated with exposure to HAP, ozone and $PM_{2.5}$ in the RIA for this rule. These qualitative effects are briefly summarized below, but for more detailed information, please refer to the RIA, which is available in the docket. One of the HAP of concern from the oil and natural gas sector is benzene, which is a known human carcinogen, and formaldehyde, which is a probable human carcinogen. VOC emissions are precursors to both $PM_{2.5}$ and ozone formation. As documented in previous analyses (U.S. EPA, 2006[41] and U.S. EPA, 2010[42]), exposure to $PM_{2.5}$ and ozone is associated with significant public health effects. $PM_{2.5}$ is associated with health effects such as premature mortality for adults and infants, cardiovascular morbidity, such as heart attacks, hospital admissions and respiratory morbidity such as asthma attacks, acute and chronic bronchitis, hospital and emergency room visits, work loss days, restricted activity days and respiratory symptoms, as well as visibility impairment.[43] Ozone is associated with health effects such as respiratory morbidity such as asthma attacks, hospital and emergency department visits, school loss days and premature mortality, as well as injury to vegetation and climate effects.[44]

In addition to the improvements in air quality and resulting benefits to human health and non-climate welfare effects previously discussed, this proposed rule is expected to result in significant climate co-benefits due to anticipated methane reductions. Methane is a potent GHG that, once emitted into the atmosphere, absorbs terrestrial infrared radiation, which contributes to increased global warming and continuing climate change. Methane reacts in the atmosphere to form ozone and ozone also impacts global temperatures. According to the

[41] U.S. EPA. RIA. *National Ambient Air Quality Standards for Particulate Matter*, Chapter 5. Office of Air Quality Planning and Standards. Research Triangle Park, NC. October 2006. Available on the Internet at *http://www.epa.gov/ttn/ecas/regdata/RIAs/Chapter%205-Benefits.pdf*.

[42] U.S. EPA. RIA. *National Ambient Air Quality Standards for Ozone*. Office of Air Quality Planning and Standards, Research Triangle Park, NC. January 2010. Available on the Internet at *http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf*.

[43] U.S. EPA. *Integrated Science Assessment for Particulate Matter (Final Report)*. EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division. December 2009. Available at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546*.

[44] U.S. EPA. *Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final)*. EPA/600/R–05/004aF–cF. Washington, DC: U.S. EPA. February 2006. Available on the Internet at *http://cfpub.epa.gov/ncea/CFM/recordisplay.cfm?deid=149923*.

Intergovernmental Panel on Climate Change (IPCC) 4th Assessment Report (2007), methane is the second leading long-lived climate forcer after CO_2 globally. Total methane emissions from the oil and gas industry represent about 40 percent of the total methane emissions from all sources and account for about 5 percent of all CO_2e emissions in the United States, with natural gas systems being the single largest contributor to United States anthropogenic methane emissions.[45] Methane, in addition to other GHG emissions, contributes to warming of the atmosphere, which, over time, leads to increased air and ocean temperatures, changes in precipitation patterns, melting and thawing of global glaciers and ice, increasingly severe weather events, such as hurricanes of greater intensity and sea level rise, among other impacts.

This rulemaking proposes emission control technologies and regulatory alternatives that will significantly decrease methane emissions from the oil and natural gas sector in the United States. The regulatory alternatives proposed for the NESHAP and the NSPS are expected to reduce methane emissions annually by about 3.4 million short tons or 65 million metric tons CO_2e. After considering the secondary impacts of this proposal previously discussed, such as increased CO_2 emissions from well completion combustion and decreased CO_2e emissions because of fuel-switching by consumers, the methane reductions become about 62 million metric tons CO_2e. These reductions represent about 26 percent of the baseline methane emissions for this sector reported in the EPA's U.S. Greenhouse Gas Inventory Report for 2009 (251.55 million metric tons CO_2e when petroleum refineries and petroleum transportation are excluded because these sources are not examined in this proposal). After considering the secondary impacts of this proposal, such as increased CO_2 emissions from well completion combustion and decreased CO_2 emissions because of fuel-switching by consumers, the CO_2e GHG reductions are reduced to about 62 million metric tons CO_2e. However, it is important to note that the emission reductions are based upon predicted activities in 2015; the EPA did not forecast sector-level emissions in 2015 for this rulemaking. These emission reductions equate to the climate benefits of taking approximately 11 million typical passenger cars off the road or eliminating electricity use from about 7 million typical homes each year.[46]

The EPA recognizes that the methane reductions proposed in this rule will provide for significant economic climate benefits to society just described. However, there is no interagency-accepted methodology to place monetary values on these benefits. A 'global warming potential (GWP) approach' of converting methane to CO_2e using the GWP of methane provides an approximation method for estimating the monetized value of the methane reductions anticipated from this rule. This calculation uses the GWP of the non-CO_2 gas to estimate CO_2 equivalents and then multiplies these CO_2 equivalent emission reductions by the social cost of carbon developed by the Interagency Social Cost of Carbon Work Group to generate monetized estimates of the benefits.

The social cost of carbon is an estimate of the net present value of the flow of monetized damages from a 1-metric ton increase in CO_2 emissions in a given year (or from the alternative perspective, the benefit to society of reducing CO_2 emissions by 1 ton). For more information about the social cost of carbon, see the *Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*[47] and RIA for the Light-Duty Vehicle GHG rule.[48] Applying this approach to the methane reductions estimated for the proposed NESHAP and NSPS of the oil and gas rule, the 2015 climate co-benefits vary by discount rate and range from about $370 million to approximately $4.7 billion; the mean social cost of carbon at the 3-percent discount rate results in an estimate of about $1.6 billion in 2015.

The ratio of domestic to global benefits of emission reductions varies with key parameter assumptions. For example, with a 2.5 or 3 percent discount rate, the U.S. benefit is about 7–10 percent of the global benefit, on average, across the scenarios analyzed. Alternatively, if the fraction of GDP lost due to climate change is assumed to be similar across countries, the domestic benefit would be proportional to the U.S. share of global GDP, which is currently about 23 percent. On the basis of this evidence, values from 7 to 23 percent should be used to adjust the global SCC to calculate domestic effects. It is recognized that these values are approximate, provisional and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.[49]

These co-benefits equate to a range of approximately $110 to $1,400 per short ton of methane reduced, depending upon the discount rate assumed with a per ton estimate of $480 at the 3-percent discount rate. Methane climate co-benefit estimates for additional regulatory alternatives are included in the RIA for this proposed rule. These social cost of methane benefit estimates are not the same as would be derived from direct computations (using the integrated assessment models employed to develop the Interagency Social Cost of Carbon estimates) for a variety of reasons, including the shorter atmospheric lifetime of methane relative to CO_2 (about 12 years compared to CO_2 whose concentrations in the atmosphere decay on timescales of decades to millennia). The climate impacts also differ between the pollutants for reasons other than the radiative forcing profiles and atmospheric lifetimes of these gases.

Methane is a precursor to ozone and ozone is a short-lived climate forcer that contributes to global warming. The use of the *IPCC Second Assessment Report GWP* to approximate co-benefits may underestimate the direct radiative forcing benefits of reduced ozone levels and does not capture any secondary climate co-benefits involved with ozone-ecosystem interactions. In addition, a recent EPA National Center of Environmental Economics working paper suggests that this quick 'GWP approach' to benefits estimation will likely understate the climate benefits of methane reductions in most cases.[50] This conclusion is reached using the 100-year GWP for methane of 25 as put forth in the *IPCC Fourth Assessment Report (AR 4)*, as opposed to the lower

[45] U.S. EPA (2011), *2011 U.S. Greenhouse Gas Inventory Report* Executive Summary available on the internet at *http://www.epo.gov/climoteexchonge/emissions/downloods11/US-GHG-Inventory-2011-Executive Summory.pdf.*

[46] U.S. EPA. *Greenhouse Gos Equivolency Colculotor* available at: *http://www.epo.gov/cleonenergy/energy-resources/colculotor.html* accessed 07/19/11.

[47] Interagency Working Group on Social Cost of Carbon (IWGSC). 2010. Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. Docket ID EPA–HQ–OAR–2009–0472–114577. *http://www.epo.gov/otoq/climote/regulotions/scc-tsd.pdf;* Accessed March 30, 2011.

[48] U.S. EPA. *Finol Rulemoking: Light-Duty Vehicle Greenhouse Gos Emissions Stondords ond Corporote Averoge Fuel Economy Stondords.* May 2010. Available on the Internet at *http://www.epo.gov/otoq/climote/regulations.htm#finolR.*

[49] Interagency Working Group on Social Cost of Carbon (IWGSC). 2010. *Technicol Support Document: Sociol Cost of Corbon for Regulotory Impoct Anolysis Under Executive Order 12866.*

[50] Marten and Newbold (2011), Estimating the Social Cost of Non-CO_2 *GHG Emissions: Methane ond Nitrous Oxide*, NCEE Working Paper Series #11–01. *http://yosemite.epo.gov/EE/epo/eed.nsf/WPNumber/2011-01?OpenDocument.*

value of 21 used in this analysis. Using the higher GWP estimate of 25 would increase these reported methane climate co-benefit estimates by about 19 percent. Although the *IPCC Assessment Report (AR4)* suggested a GWP of 25 for methane, the EPA has used GWP of 21 to estimate the methane climate co-benefits for this oil and gas proposal in order to provide estimates more consistent with global GHG inventories, which currently use GWP from the *IPCC Second Assessment Report*.

Due to the uncertainties involved with the 'GWP approach' estimates presented and methane climate co-benefits estimates available in the literature, the EPA chooses not to compare these co-benefit estimates to the costs of the rule for this proposal. Rather, the EPA presents the 'GWP approach' climate co-benefit estimates as an interim method to produce these estimates until the Interagency Social Cost of Carbon Work Group develops values for non-CO_2 GHG. The EPA requests comments from interested parties and the public about this interim approach specifically and more broadly about appropriate methods to monetize the climate benefits of methane reductions. In particular, the EPA seeks public comments to this proposed rulemaking regarding social cost of methane estimates that may be used to value the co-benefits of methane emission reductions anticipated for the oil and gas industry from this rule. Comments specific to whether GWP is an acceptable method for generating a placeholder value for the social cost of methane until interagency-modeled estimates become available are welcome. Public comments may be provided in the official docket for this proposed rulemaking in accordance with the process outlined earlier in this notice. These comments will be considered in developing the final rule for this rulemaking.

For the proposed NESHAP amendments, a break-even analysis suggests that HAP emissions would need to be valued at $12,000 per ton for the benefits to exceed the costs if the health, ecosystem and climate benefits from the reductions in VOC and methane emissions are assumed to be zero. Even though emission reductions of VOC and methane are co-benefits for the proposed NESHAP amendments, they are legitimate components of the total benefit-cost comparison. If we assume the health benefits from HAP emission reductions are zero, the VOC emissions would need to be valued at $1,700 per ton or the methane emissions would need to be valued at $3,300 per ton for the co-benefits to exceed the costs. All estimates are in 2008 dollars. For the proposed NSPS, the revenue from additional product recovery exceeds the costs, which renders a break-even analysis unnecessary when these revenues are included in the analysis. Based on the methodology from Fann, Fulcher, and Hubbell (2009),[51] ranges of benefit-per-ton estimates for emissions of VOC indicate that on average in the United States, VOC emissions are valued from $1,200 to $3,000 per ton as a $PM_{2.5}$ precursor, but emission reductions in specific areas are valued from $280 to $7,000 per ton in 2008 dollars. As a result, even if VOC emissions from oil and natural gas operations result in monetized benefits that are substantially below the national average, there is a reasonable chance that the benefits of the rule would exceed the costs, especially if we were able to monetize all of the additional benefits associated with ozone formation, visibility, HAP and methane.

IX. Request for Comments

We are soliciting comments on all aspects of this proposed action. All comments received during the comment period will be considered. In addition to general comments on the proposed actions, we are also interested in any additional data that may help to reduce the uncertainties inherent in the risk assessments. We are specifically interested in receiving corrections to the datasets used for MACT analyses and risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Please see the following section for more information on submitting data.

X. Submitting Data Corrections

The facility-specific data used in the source category risk analyses, facility-wide analyses and demographic analyses for each source category subject to this action are available for download on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*. These data files include detailed information for each HAP emissions release point at each facility included in the source category and all other HAP emissions sources at these facilities (facility-wide emissions sources). However, it is important to note that the source category risk analysis included only those emissions tagged with the MACT code associated with the source category subject to the risk analysis.

If you believe the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern and provide any "improved" data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information. The data fields that may be revised include the following:

Data element	Definition
Control Measure	Are control measures in place? (yes or no).
Control Measure Comment	Select control measure from list provided and briefly describe the control measure.
Delete	Indicate here if the facility or record should be deleted.
Delete Comment	Describes the reason for deletion.
Emission Calculation Method Code for Revised Emissions.	Code description of the method used to derive emissions. For example, CEM, material balance, stack test, etc.
Emission Process Group	Enter the general type of emission process associated with the specified emission point.
Fugitive Angle	Enter release angle (clockwise from true North); orientation of the y-dimension relative to true North, measured positive for clockwise starting at 0 degrees (maximum 89 degrees).
Fugitive Length	Enter dimension of the source in the east-west (x-) direction, commonly referred to as length (ft).

[51] Fann, N., C.M. Fulcher, B.J. Hubbell. *The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution.* Air Qual Atmos Health (2009) 2:169–176.

Data element	Definition
Fugitive Width	Enter dimension of the source in the north-south (y-) direction, commonly referred to as width (ft).
Malfunction Emissions	Enter total annual emissions due to malfunctions (TPY).
Malfunction Emissions Max Hourly	Enter maximum hourly malfunction emissions here (lb/hr).
North American Datum	Enter datum for latitude/longitude coordinates (NAD27 or NAD83); if left blank, NAD83 is assumed.
Process Comment	Enter general comments about process sources of emissions.
REVISED Address	Enter revised physical street address for MACT facility here.
REVISED City	Enter revised city name here.
REVISED County Name	Enter revised county name here.
REVISED Emission Release Point Type	Enter revised Emission Release Point Type here.
REVISED End Date	Enter revised End Date here.
REVISED Exit Gas Flow Rate	Enter revised Exit Gas Flowrate here (ft^3/sec).
REVISED Exit Gas Temperature	Enter revised Exit Gas Temperature here (OF).
REVISED Exit Gas Velocity	Enter revised Exit Gas Velocity here (ft/sec).
REVISED Facility Category Code	Enter revised Facility Category Code here, which indicates whether facility is a major or area source.
REVISED Facility Name	Enter revised Facility Name here.
REVISED Facility Registry Identifier	Enter revised Facility Registry Identifier here, which is an ID assigned by the EPA Facility Registry System.
REVISED HAP Emissions Performance Level Code	Enter revised HAP Emissions Performance Level here.
REVISED Latitude	Enter revised Latitude here (decimal degrees).
REVISED Longitude	Enter revised Longitude here (decimal degrees).
REVISED MACT Code	Enter revised MACT Code here.
REVISED Pollutant Code	Enter revised Pollutant Code here.
REVISED Routine Emissions	Enter revised routine emissions value here (TPY).
REVISED SCC Code	Enter revised SCC Code here.
REVISED Stack Diameter	Enter revised Stack Diameter here (ft).
REVISED Stack Height	Enter revised Stack Height here (Ft).
REVISED Start Date	Enter revised Start Date here.
REVISED State	Enter revised state here.
REVISED Tribal Code	Enter revised Tribal Code here.
REVISED Zip Code	Enter revised Zip Code here.
Shutdown Emissions	Enter total annual emissions due to shutdown events (TPY).
Shutdown Emissions Max Hourly	Enter maximum hourly shutdown emissions here (lb/hr).
Stack Comment	Enter general comments about emission release points.
Startup Emissions	Enter total annual emissions due to startup events (TPY).
Startup Emissions Max Hourly	Enter maximum hourly startup emissions here (lb/hr).
Year Closed	Enter date facility stopped operations.

2. Fill in the commenter information fields for each suggested revision (*i.e.*, commenter name, commenter organization, commenter e-mail address, commenter phone number and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.*, performance test reports, material balance calculations, etc.).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Number EPA–HQ–OAR–2010–0505 (through one of the methods described in the **ADDRESSES** section of this preamble). To expedite review of the revisions, it would also be helpful if you submitted a copy of your revisions to the EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility with multiple source categories, you need only submit one file for that facility, which should contain all suggested changes for all source categories at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* Web page.

XI. 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 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, the EPA submitted this action to OMB for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, the EPA prepared a RIA of the potential costs and benefits associated with this action. The RIA available in the docket describes in detail the empirical basis for the EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below. Table 8 shows the results of the cost and benefits analysis for these proposed rules. For more information on the benefit and cost analysis, as well as details on the regulatory options considered, please refer to the RIA for this rulemaking, which is available in the docket.

TABLE 8—SUMMARY OF THE MONETIZED BENEFITS, COSTS AND NET BENEFITS FOR THE PROPOSED OIL AND NATURAL GAS NSPS AND NEHSAP AMENDMENTS IN 2015

[Millions of 2008$] [1]

	Proposed NSPS	Proposed NESHAP amendments	Proposed NSPS and NESHAP amendments combined
Total Monetized Benefits [2]	N/A	N/A	N/A.
Total Costs [3]	−$45 million	$16 million	−$29 million.
Net Benefits	N/A	N/A	N/A.
Non-monetized Benefits [4 5]	37,000 tons of HAP 540,000 tons of VOC 3.4 million tons of methane	1,400 tons of HAP 9,200 tons of VOC 4,900 tons of methane	38,000 tons of HAP. 540,000 tons of VOC. 3.4 million tons of methane.
	Health effects of HAP exposure. Health effects of $PM_{2.5}$ and ozone exposure. Visibility impairment. Vegetation effects. Climate effects.		

[1] All estimates are for the implementation year (2015).

[2] While we expect that these avoided emissions will result in improvements in air quality and reductions in health effects associated with HAP, ozone and PM, as well as climate effects associated with methane, we have determined that quantification of those benefits cannot be accomplished for this rule in a defensible way. This is not to imply that there are no benefits of the rules; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this industrial sector with the data currently available.

[3] The engineering compliance costs are annualized using a 7-percent discount rate. The negative cost for the proposed NSPS reflects the inclusion of revenues from additional natural gas and hydrocarbon condensate recovery that are estimated as a result of the proposed NSPS.

[4] For the NSPS, reduced exposure to HAP and climate effects are co-benefits. For the NESHAP, reduced VOC emissions, $PM_{2.5}$ and ozone exposure, visibility and vegetation effects and climate effects are co-benefits.

[5] The specific control technologies for these proposed rules are anticipated to have minor secondary disbenefits. The net CO_2-equivalent emission reductions are 93,000 metric tons for the NESHAP and 62 million metric tons for the NSPS.

B. Paperwork Reduction Act

The information collection requirements in this proposed action have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* The ICR document prepared by the EPA has been assigned EPA ICR Numbers 1716.07 (40 CFR part 60, subpart OOOO), 1788.10 (40 CFR part 63, subpart HH), 1789.07 (40 CFR part 63, subpart HHH) and 1086.10 (40 CFR part 60, subparts KKK and subpart LLL).

The information to be collected for the proposed NSPS and the proposed NESHAP amendments are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

These proposed rules would require maintenance inspections of the control devices, but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

For sources subject to the proposed NSPS, burden changes associated with these amendments result from the respondents' annual reporting and recordkeeping burden associated with this proposed rule for this collection (averaged over the first 3 years after the effective date of the standards). The burden is estimated to be 560,000 labor hours at a cost of $18 million per year. This includes the burden previously estimated for sources subject to 40 CFR part 60, subpart KKK (which is being incorporated into 40 CFR part 60, subpart OOOO). The average hours and cost per regulated entity subject to the NSPS for oil and natural gas production and natural gas transmissions and distribution facilities would be 110 hours per response and $3,693 per response, based on an average of 1,459 operators responding per year and 16 responses per year.

The estimated recordkeeping and reporting burden after the effective date of the proposed amendments is estimated for all affected major and area sources subject to the Oil and Natural Gas Production NESHAP to be approximately 63,000 labor hours per year at a cost of $2.1 million per year. For the Natural Gas Transmission and Storage NESHAP, the recordkeeping and reporting burden is estimated to be 2,500 labor hours per year at a cost of $86,800 per year. This estimate includes the cost of reporting, including reading instructions and information gathering. Recordkeeping cost estimates include reading instructions, planning activities and conducting compliance monitoring. The average hours and cost per regulated entity subject to the Oil and Natural Gas Production NESHAP would be 72 hours per year and $2,500 per year, based on an average of 846 facilities per year and three responses per facility. For the Natural Gas Transmission and Storage NESHAP, the average hours and cost per regulated entity would be 50 hours per year and $1,600 per year, based on an average of 53 facilities per year and three responses per facility. Burden is defined at 5 CFR 1320.3(b).

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID Number EPA–HQ–OAR–2010–0505. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the

EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 23, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by September 22, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 (SISNOSE). Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of this rule on small entities, a small entity is defined as: (1) A small business whose parent company has no more than 500 employees (or revenues of less than $7 million for firms that transport natural gas via pipeline); (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.

Proposed NSPS

After considering the economic impact of the proposed NSPS on small entities, I certify that this action will not have a SISNOSE. The EPA performed a screening analysis for impacts on a sample of expected affected small entities by comparing compliance costs to entity revenues. Based upon the analysis in the RIA, which is in the Docket, EPA concludes the number of impacted small businesses is unlikely to be sufficiently large to declare a SISNOSE. Our judgment in this determination is informed by the fact that many affected firms are expected to receive revenues from the additional natural gas and condensate recovery engendered by the implementation of the controls evaluated in this RIA. As much of the additional natural gas recovery is estimated to arise from completion-related activities, we expect the impact on well-related compliance costs to be significantly mitigated. This conclusion is enhanced because the returns to REC activities occur without a significant time lag between implementing the control and obtaining the recovered product, unlike many control options where the emissions reductions accumulate over long periods of time; the reduced emission completions and recompletions occur over a short span of time, during which the additional product recovery is also accomplished.

Proposed NESHAP Amendments

After considering the economic impact of the proposed NESHAP amendments on small entities, I certify that this action will not have a SISNOSE. Based upon the analysis in the RIA, which is in the Docket, we estimate that 62 of the 118 firms (53 percent) that own potentially affected facilities are small entities. The EPA performed a screening analysis for impacts on all expected affected small entities by comparing compliance costs to entity revenues. Among the small firms, 52 of the 62 (84 percent) are likely to have impacts of less than 1 percent in terms of the ratio of annualized compliance costs to revenues. Meanwhile, *10 firms (16 percent)* are likely to have impacts greater than 1 percent. Four of these *10* firms are likely to have impacts greater than 3 percent. While these *10* firms might receive significant impacts from the proposed NESHAP amendments, they represent a very small slice of the oil and gas industry in its entirety, less than 0.2 percent of the estimated 6,427 small firms in NAICS 211. Although this final rule will not impact a substantial number of small entities, the EPA, nonetheless, has tried to reduce the impact of this rule on small entities by setting the final emissions limits at the MACT floor, the least stringent level allowed by law.

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. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or to the private sector in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed 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 effect 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 action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This actions' health and risk assessments are contained in section VII.C of this preamble.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to HAP from oil and natural gas sector activities.

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

Executive Order 13211, (66 FR 28,355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as significant energy actions. Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

The proposed rules will result in the addition of control equipment and monitoring systems for existing and new sources within the oil and natural gas industry. The proposed NESHAP amendments are unlikely to have a significant adverse effect on the supply, distribution or use of energy. As such, the proposed NESHAP amendments are not "significant energy actions" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001).

The proposed NSPS is also unlikely to have a significant effect on the supply, distribution or use of energy. As such, the proposed NSPS is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001). The basis for the determination is as follows.

As discussed in the impacts section of the Preamble, we use the NEMS to estimate the impacts of the proposed NSPS on the United States energy system. The NEMS is a publically available model of the United States energy economy developed and maintained by the Energy Information Administration of the United States DOE and is used to produce the *Annual Energy Outlook*, a reference publication that provides detailed forecasts of the United States energy economy.

Proposed emission controls for the NSPS capture VOC emissions that otherwise would be vented to the atmosphere. Since methane is co-emitted with VOC, a large proportion of the averted methane emissions can be directed into natural gas production streams and sold. One pollution control requirement of the proposed NSPS also captures saleable condensates. The revenues from additional natural gas and condensate recovery are expected to offset the costs of implementing the proposed NSPS.

The analysis of energy impacts for the proposed NSPS that includes the additional product recovery shows that domestic natural gas production is estimated to increase (20 billion cubic feet or 0.1 percent) and natural gas prices to decrease ($0.04/Mcf or 0.9 percent at the wellhead for producers in the lower 48 states) in 2015, the year of analysis. Domestic crude oil production is not estimated to change, while crude oil prices are estimated to decrease slightly ($0.02/barrel or less than 0.1 percent at the wellhead for producers in the lower 48 states) in 2015, the year of analysis. All prices are in 2008 dollars.

Additionally, the NSPS establishes several performance standards that give regulated entities flexibility in determining how to best comply with the regulation. In an industry that is geographically and economically heterogeneous, this flexibility is an important factor in reducing regulatory burden.

For more information on the estimated energy effects, please refer to the economic impact analysis for this proposed rule. The analysis is available in the RIA, which is in the public docket.

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 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed rule involves technical standards. Therefore, the requirements of the NTTAA apply to this action. We are proposing to revise 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH to allow ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses (Part 10, Instruments and Apparatus) to be used in lieu of EPA Methods 3B, 6 and 16A. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. Also, we are proposing to revise subpart HHH to allow ASTM D6420–99 (2004), *Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry*, to be used in lieu of EPA Method 18. For a detailed discussion of this VCS, and its appropriateness as a substitute for Method 18, see the final Oil and Natural Gas Production NESHAP (Area Sources) (72 FR 36, January 3, 2007).

As a result, the EPA is proposing ASTM D6420–99 (2004) for use in 40 CFR part 63, subpart HHH. The EPA also proposes to allow Method 18 as an option in addition to ASTM D6420–99 (2004). This would allow the continued use of gas chromatography configurations other than gas chromatography/mass spectrometry.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

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 EJ. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

To examine the potential for any EJ issues that might be associated with each source category, we evaluated the distributions of HAP-related cancer and noncancer risks across different social, demographic and economic groups within the populations living near the facilities where these source categories

are located. The methods used to conduct demographic analyses for this rule are described in section VII.C of the preamble for this rule. The development of demographic analyses to inform the consideration of EJ issues in EPA rulemakings is an evolving science. The EPA offers the demographic analyses in this proposed rulemaking as examples of how such analyses might be developed to inform such consideration, and invites public comment on the approaches used and the interpretations made from the results, with the hope that this will support the refinement and improve utility of such analyses for future rulemakings.

For the demographic analyses, we focused on the populations within 50 km of any facility estimated to have exposures to HAP which result in cancer risks of 1-in-1 million or greater, or noncancer HI of 1 or greater (based on the emissions of the source category or the facility, respectively). We examined the distributions of those risks across various demographic groups, comparing the percentages of particular demographic groups to the total number of people in those demographic groups nationwide. The results, including other risk metrics, such as average risks for the exposed populations, are documented in source category-specific technical reports in the docket for both source categories covered in this proposal.

As described in the preamble, our risk assessments demonstrate that the regulations for the oil and natural gas production and natural gas transmission and storage source categories, are associated with an acceptable level of risk and that the proposed additional requirements will provide an ample margin of safety to protect public health. Our analyses also show that, for these source categories, there is no potential for an adverse environmental effect or human health multi-pathway effects, and that acute and chronic noncancer health impacts are unlikely. The EPA has determined that, although there may be an existing disparity in HAP risks from these sources between some demographic groups, no demographic group is exposed to an unacceptable level of risk.

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 63

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 28, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

2. Section 60.17 is amended by:

a. Revising paragraph (a)(7); and

b. Revising paragraphs (a)(91) and (a)(92) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(7) ASTM D86–78, 82, 90, 93, 95, 96, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h) and 60.5401(h).

* * * * *

(91) ASTM E169–63, 77, 93, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.485a(d)(1), 60.593(b)(2), 60.593a(b)(2), 60.632(f) and 60.5400(f).

(92) ASTM E260–73, 91, 96, General Gas Chromatography Procedures, IBR approved for §§ 60.485a(d)(1), 60.593(b)(2), 60.593a(b)(2), 60.632(f), 60.5400(f) and 60.5406(b).

* * * * *

Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011

3. The heading for Subpart KKK is revised to read as set out above.

4. Section 60.630 is amended by revising paragraph (b) to read as follows:

§ 60.630 Applicability and designation of affected facility.

* * * * *

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 20, 1984, and on or before August 23, 2011, is subject to the requirements of this subpart.

* * * * *

Subpart LLL—Standards of Performance for SO_2 Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984; and on or Before August 23, 2011

5. The heading for Subpart LLL is revised to read as set out above.

6. Section 60.640 is amended by revising paragraph (d) to read as follows:

§ 60.640 Applicability and designation of affected facilities.

* * * * *

(d) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section which commences construction or modification after January 20, 1984, and on or before August 23, 2011.

* * * * *

7. Add subpart OOOO to part 60 to read as follows:

Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution

Sec.

Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution

§ 60.5360 What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for the control of volatile organic compounds (VOC) and sulfur dioxide (SO_2) emissions from affected facilities that commenced construction, modification or reconstruction after August 23, 2011.

§ 60.5365 Am I subject to this subpart?

If you are the owner or operator of one or more of the affected facilities listed in paragraphs (a) through (g) of this section that commenced construction, modification, or reconstruction after August 23, 2011 your affected facility is subject to the applicable provisions of this subpart. For the purposes of this subpart, a well completion operation following hydraulic fracturing or refracturing that occurs at a gas wellhead facility that commenced construction, modification, or reconstruction on or before August 23, 2011 is considered a modification of the gas wellhead facility, but does not affect other equipment, process units, storage vessels, or pneumatic devices located at the well site.

(a) A gas wellhead affected facility, is a single natural gas well.

(b) A centrifugal compressor affected facility, which is defined as a single centrifugal compressor located between the wellhead and the city gate (as defined in § 60.5430), except that a centrifugal compressor located at a well site (as defined in § 60.5430) is not an affected facility under this subpart. For the purposes of this subpart, your centrifugal compressor is considered to have commenced construction on the date the compressor is installed at the facility.

(c) A reciprocating compressor affected facility, which is defined as a single reciprocating compressor located between the wellhead and the city gate (as defined in § 60.5430), except that a reciprocating compressor located at a well site (as defined in § 60.5430) is not an affected facility under this subpart. For the purposes of this subpart, your reciprocating compressor is considered to have commenced construction on the date the compressor is installed at the facility.

(d) A pneumatic controller affected facility, which is defined as a single pneumatic controller.

(e) A storage vessel affected facility, which is defined as a single storage vessel.

(f) Compressors and equipment (as defined in § 60.5430) located at onshore natural gas processing plants.

(1) Each compressor in VOC service or in wet gas service is an affected facility.

(2) The group of all equipment, except compressors, within a process unit is an affected facility.

(3) Addition or replacement of equipment, as defined in § 60.5430, for the purpose of process improvement that is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(4) Equipment (as defined in § 60.5430) associated with a compressor station, dehydration unit, sweetening unit, underground storage tank, field gas gathering system, or liquefied natural gas unit is covered by §§ 60.5400, 60.5401, 60.5402, 60.5421 and 60.5422 of this subpart if it is located at an onshore natural gas processing plant. Equipment (as defined in § 60.5430) not located at the onshore natural gas processing plant site is exempt from the provisions of §§ 60.5400, 60.5401, 60.5402, 60.5421 and 60.5422 of this subpart.

(5) Affected facilities located at onshore natural gas processing plants and described in paragraphs (f)(1) and (f)(2) of this section are exempt from this subpart if they are subject to and controlled according to subparts VVa, GGG or GGGa of this part.

(g) Sweetening units located onshore that process natural gas produced from either onshore or offshore wells.

(1) Each sweetening unit that processes natural gas is an affected facility; and

(2) Each sweetening unit that processes natural gas followed by a sulfur recovery unit is an affected facility.

(3) Facilities that have a design capacity less than 2 long tons per day (LT/D) of hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) are required to comply with recordkeeping and reporting requirements specified in § 60.5423(c) but are not required to comply with §§ 60.5405 through 60.5407 and paragraphs 60.5410(g) and 60.5415(g) of this subpart.

(4) Sweetening facilities producing acid gas that is completely reinjected into oil-or-gas-bearing geologic strata or that is otherwise not released to the atmosphere are not subject to §§ 60.5405 through 60.5407, and §§ 60.5410(g), 60.5415(g), and § 60.5423 of this subpart.

§ 60.5370 When must I comply with this subpart?

(a) You must be in compliance with the standards of this subpart no later than the date of publication of the final rule in the **Federal Register** or upon startup, whichever is later.

(b) The provisions for exemption from compliance during periods of startup, shutdown, and malfunctions provided for in 40 CFR 60.8(c) do not apply to this subpart.

(c) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 60.5375 What standards apply to gas wellhead affected facilities?

If you are the owner or operator of a gas wellhead affected facility, you must comply with paragraphs (a) through (g) of this section.

(a) Except as provided in paragraph (f) of this section, for each well completion operation with hydraulic fracturing, as defined in § 60.5430, you must control emissions by the operational procedures found in paragraphs (a)(1) through (a)(3) of this section.

(1) You must minimize the emissions associated with venting of hydrocarbon fluids and gas over the duration of flowback by routing the recovered liquids into storage vessels and routing the recovered gas into a gas gathering line or collection system.

(2) You must employ sand traps, surge vessels, separators, and tanks during flowback and cleanout operations to safely maximize resource recovery and minimize releases to the environment. All salable quality gas must be routed to the gas gathering line as soon as practicable.

(3) You must capture and direct flowback emissions that cannot be directed to the gathering line to a completion combustion device, except in conditions that may result in a fire hazard or explosion. Completion combustion devices must be equipped with a reliable continuous ignition source over the duration of flowback.

(b) You must maintain a log for each well completion operation at each gas wellhead affected facility. The log must be completed on a daily basis and must contain the records specified in § 60.5420(c)(1)(iii).

(c) You must demonstrate initial compliance with the standards that apply to gas wellhead affected facilities as required by § 60.5410.

(d) You must demonstrate continuous compliance with the standards that apply to gas wellhead affected facilities as required by § 60.5415.

(e) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

(f) For wells meeting the criteria for wildcat or delineation wells, each well completion operation with hydraulic fracturing at a gas wellhead affected facility must reduce emissions by using a completion combustion device meeting the requirements of paragraph (a)(3) of this section. You must also maintain records specified in § 60.5420(c)(1)(iii) for wildcat or delineation wells.

§ 60.5380 What standards apply to centrifugal compressor affected facilities?

You must comply with the standards in paragraphs (a) through (d) of this section, as applicable for each centrifugal compressor affected facility.

(a) You must equip each rotating compressor shaft with a dry seal system upon initial startup.

(b) You must demonstrate initial compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5410.

(c) You must demonstrate continuous compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5415.

(d) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

§ 60.5385 What standards apply to reciprocating compressor affected facilities?

You must comply with the standards in paragraphs (a) through (d) of this section for each reciprocating compressor affected facility.

(a) You must replace the reciprocating compressor rod packing before the compressor has operated for 26,000 hours. The number of hours of operation must be continuously monitored beginning upon initial startup of your reciprocating compressor affected facility, or the date of publication of the final rule in the **Federal Register**, or the date of the previous reciprocating compressor rod packing replacement, whichever is later.

(b) You must demonstrate initial compliance with standards that apply to reciprocating compressor affected facilities as required by § 60.5410.

(c) You must demonstrate continuous compliance with standards that apply to reciprocating compressor affected facilities as required by § 60.5415.

(d) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

§ 60.5390 What standards apply to pneumatic controller affected facilities?

For each pneumatic controller affected facility you must comply with the VOC standards, based on natural gas as a surrogate for VOC, in either paragraph (b) or (c) of this section, as applicable. Pneumatic controllers meeting the conditions in paragraph (a) are exempt from this requirement.

(a) The requirements of paragraph (b) or (c) of this section are not required if you demonstrate, to the Administrator's satisfaction, that the use of a high bleed device is predicated. The demonstration may include, but is not limited to, response time, safety and actuation.

(b) Each pneumatic controller affected facility located at a natural gas processing plant (as defined in § 60.5430) must have zero emissions of natural gas.

(c) Each pneumatic controller affected facility not located at a natural gas processing plant (as defined in § 60.5430) must have natural gas emissions no greater than 6 standard cubic feet per hour.

(d) You must demonstrate initial compliance with standards that apply to pneumatic controller affected facilities as required by § 60.5410.

(e) You must demonstrate continuous compliance with standards that apply to pneumatic controller affected facilities as required by § 60.5415.

(f) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420, except that you are not required to submit the notifications specified in § 60.5420(a).

§ 60.5395 What standards apply to storage vessel affected facilities?

You must comply with the standards in paragraphs (a) through (e) of this section for each storage vessel affected facility.

(a) You must comply with the standards for storage vessels specified in § 63.766(b) and (c) of this chapter, except as specified in paragraph (b) of this section. Storage vessels that meet either one or both of the throughput conditions specified in paragraphs (a)(1) or (a)(2) of this section are not subject to the standards of this section.

(1) The annual average condensate throughput is less than 1 barrel per day per storage vessel.

(2) The annual average crude oil throughput is less than 20 barrels per day per storage vessel.

(b) This standard does not apply to storage vessels already subject to and controlled in accordance with the requirements for storage vessels in § 63.766(b)(1) or (2) of this chapter.

(c) You must demonstrate initial compliance with standards that apply to storage vessel affected facilities as required by § 60.5410.

(d) You must demonstrate continuous compliance with standards that apply to storage vessel affected facilities as required by § 60.5415.

(e) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

§ 60.5400 What VOC standards apply to affected facilities at an onshore natural gas processing plant?

This section applies to each compressor in VOC service or in wet gas service and the group of all equipment (as defined in § 60.5430), except compressors, within a process unit.

(a) You must comply with the requirements of § 60.482–1a(a), (b), and (d), § 60.482–2a, and § 60.482–4a through 60.482–11a, except as provided in § 60.5401.

(b) You may elect to comply with the requirements of §§ 60.483–1a and 60.483–2a, as an alternative.

(c) You may apply to the Administrator for permission to use an alternative means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to that achieved by the controls required in this subpart according to the requirements of § 60.5402 of this subpart.

(d) You must comply with the provisions of § 60.485a of this part except as provided in paragraph (f) of this section.

(e) You must comply with the provisions of §§ 60.486a and 60.487a of this part except as provided in §§ 60.5401, 60.5421, and 60.5422 of this part.

(f) You must use the following provision instead of § 60.485a(d)(1): Each piece of equipment is presumed to be in VOC service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VOC service or in wet gas service. For a piece of equipment to be considered not in VOC service, it must be determined that the VOC content can be reasonably expected never to exceed 10.0 percent by weight. For a piece of equipment to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction step in the process. For purposes of determining the percent VOC content of the process fluid that is contained in or contacts a piece of equipment, procedures that conform to the methods described in ASTM E169–63, 77, or 93, E168–67, 77, or 92, or E260–73, 91, or 96 (incorporated by reference as specified in § 60.17) must be used.

§ 60.5401 What are the exceptions to the VOC standards for affected facilities at onshore natural gas processing plants?

(a) You may comply with the following exceptions to the provisions of subpart VVa of this part.

(b)(1) Each pressure relief device in gas/vapor service may be monitored quarterly and within 5 days after each pressure release to detect leaks by the methods specified in § 60.485a(b) except as provided in § 60.5400(c) and in paragraph (b)(4) of this section, and § 60.482–4a(a) through (c) of subpart VVa.

(2) If an instrument reading of 5000 ppm or greater is measured, a leak is detected.

(3)(i) When a leak is detected, it must be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 60.482–9a.

(ii) A first attempt at repair must be made no later than 5 calendar days after each leak is detected.

(4)(i) Any pressure relief device that is located in a nonfractionating plant that is monitored only by non-plant personnel may be monitored after a pressure release the next time the monitoring personnel are on-site, instead of within 5 days as specified in paragraph (b)(1) of this section and § 60.482–4a(b)(1) of subpart VVa.

(ii) No pressure relief device described in paragraph (b)(4)(i) of this section must be allowed to operate for more than 30 days after a pressure release without monitoring.

(c) Sampling connection systems are exempt from the requirements of § 60.482–5a.

(d) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant with a design capacity to process 283,200 standard cubic meters per day (scmd) (10 million standard cubic feet per day) or more of field gas are exempt from the routine monitoring requirements of §§ 60.482–2a(a)(1) and 60.482–7a(a), and paragraph (b)(1) of this section.

(e) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located in the Alaskan North Slope are exempt from the routine monitoring requirements of §§ 60.482–2a(a)(1), 60.482–7a(a), and paragraph (b)(1) of this section.

(f) Flares used to comply with this subpart must comply with the requirements of § 60.18.

(g) An owner or operator may use the following provisions instead of § 60.485a(e):

(1) Equipment is in heavy liquid service if the weight percent evaporated is 10 percent or less at 150 °C (302 °F) as determined by ASTM Method D86–78, 82, 90, 95, or 96 (incorporated by reference as specified in § 60.17).

(2) Equipment is in light liquid service if the weight percent evaporated is greater than 10 percent at 150 °C (302 °F) as determined by ASTM Method D86–78, 82, 90, 95, or 96 (incorporated by reference as specified in § 60.17).

§ 60.5402 What are the alternative emission limitations for equipment leaks from onshore natural gas processing plants?

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under any design, equipment, work practice or operational standard, the Administrator will publish, in the **Federal Register**, a notice permitting the use of that alternative means for the purpose of compliance with that standard. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section must be published only after notice and an opportunity for a public hearing.

(c) The Administrator will consider applications under this section from either owners or operators of affected facilities, or manufacturers of control equipment.

(d) The Administrator will treat applications under this section according to the following criteria, except in cases where the Administrator concludes that other criteria are appropriate:

(1) The applicant must collect, verify and submit test data, covering a period of at least 12 months, necessary to support the finding in paragraph (a) of this section.

(2) If the applicant is an owner or operator of an affected facility, the applicant must commit in writing to operate and maintain the alternative means so as to achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under the design, equipment, work practice or operational standard.

§ 60.5405 What standards apply to sweetening units at onshore natural gas processing plants?

(a) During the initial performance test required by § 60.8(b), you must achieve at a minimum, an SO_2 emission reduction efficiency (Z_i) to be determined from Table 1 of this subpart based on the sulfur feed rate (X) and the sulfur content of the acid gas (Y) of the affected facility.

(b) After demonstrating compliance with the provisions of paragraph (a) of this section, you must achieve at a minimum, an SO_2 emission reduction efficiency (Z_c) to be determined from Table 2 of this subpart based on the sulfur feed rate (X) and the sulfur content of the acid gas (Y) of the affected facility.

60.5406 What test methods and procedures must I use for my sweetening units affected facilities at onshore natural gas processing plants?

(a) In conducting the performance tests required in § 60.8, you must use

the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in paragraph § 60.8(b).

(b) During a performance test required by § 60.8, you must determine the minimum required reduction efficiencies (Z) of SO_2 emissions as required in § 60.5405(a) and (b) as follows:

(1) The average sulfur feed rate (X) must be computed as follows:

$X - KQ_aY$

Where:

X = average sulfur feed rate, Mg/D (LT/D).
Q_a = average volumetric flow rate of acid gas from sweetening unit, dscm/day (dscf/day).
Y = average H_2S concentration in acid gas feed from sweetening unit, percent by volume, expressed as a decimal.
K = (32 kg S/kg-mole) / ((24.04 dscm/kg-mole) (1000 kg S/Mg))
= 1.331×10^{-3} Mg/dscm, for metric units
= (32 lb S/lb-mole) / ((385.36 dscf/lb-mole) (2240 lb S/long ton))
= 3.707×10^{-5} long ton/dscf, for English units.

(2) You must use the continuous readings from the process flowmeter to determine the average volumetric flow rate (Q_a) in dscm/day (dscf/day) of the acid gas from the sweetening unit for each run.

(3) You must use the Tutwiler procedure in § 60.5408 or a chromatographic procedure following ASTM E–260 (incorporated by reference—see § 60.17) to determine the H_2S concentration in the acid gas feed from the sweetening unit (Y). At least one sample per hour (at equally spaced intervals) must be taken during each 4-hour run. The arithmetic mean of all samples must be the average H_2S concentration (Y) on a dry basis for the run. By multiplying the result from the Tutwiler procedure by 1.62×10^{-3}, the units gr/100 scf are converted to volume percent.

(4) Using the information from paragraphs (b)(1) and (b)(3) of this section, Tables 1 and 2 of this subpart must be used to determine the required initial (Z_i) and continuous (Z_c) reduction efficiencies of SO_2 emissions.

(c) You must determine compliance with the SO_2 standards in § 60.5405(a) or (b) as follows:

(1) You must compute the emission reduction efficiency (R) achieved by the sulfur recovery technology for each run using the following equation:

$$R = (100S)\frac{\square}{S+E}$$

(2) You must use the level indicators or manual soundings to measure the liquid sulfur accumulation rate in the product storage tanks. You must use readings taken at the beginning and end of each run, the tank geometry, sulfur density at the storage temperature, and sample duration to determine the sulfur production rate (S) in kg/hr (lb/hr) for each run.

(3) You must compute the emission rate of sulfur for each run as follows:

$$E = \frac{C_e Q_{sd}}{K_1}$$

Where:

E = emission rate of sulfur per run, kg/hr.
C_e = concentration of sulfur equivalent (SO_2 + reduced sulfur), g/dscm (lb/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
K_1 = conversion factor, 1000 g/kg (7000 gr/lb).

(4) The concentration (C_e) of sulfur equivalent must be the sum of the SO_2 and TRS concentrations, after being converted to sulfur equivalents. For each run and each of the test methods specified in this paragraph (c) of this section, you must use a sampling time of at least 4 hours. You must use Method 1 of Appendix A to part 60 of this chapter to select the sampling site. The sampling point in the duct must be at the centroid of the cross-section if the area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 in) if the cross-sectional area is 5 m^2 or more, and the centroid is more than 1 m (39 in.) from the wall.

(i) You must use Method 6 of Appendix A to part 60 of this chapter to determine the SO_2 concentration. You must take eight samples of 20 minutes each at 30-minute intervals. The arithmetic average must be the concentration for the run. The concentration must be multiplied by 0.5×10^{-3} to convert the results to sulfur equivalent.

(ii) You must use Method 15 of appendix A to part 60 of this chapter to determine the TRS concentration from reduction-type devices or where the oxygen content of the effluent gas is less than 1.0 percent by volume. The sampling rate must be at least 3 liters/min (0.1 ft^3/min) to insure minimum residence time in the sample line. You must take sixteen samples at 15-minute intervals. The arithmetic average of all the samples must be the concentration for the run. The concentration in ppm reduced sulfur as sulfur must be multiplied by 1.333×10^{-3} to convert the results to sulfur equivalent.

(iii) You must use Method 16A or Method 15 of appendix A to part 60 of this chapter to determine the reduced sulfur concentration from oxidation-type devices or where the oxygen content of the effluent gas is greater than 1.0 percent by volume. You must take eight samples of 20 minutes each at 30-minute intervals. The arithmetic average must be the concentration for the run. The concentration in ppm reduced sulfur as sulfur must be multiplied by 1.333×10^{-3} to convert the results to sulfur equivalent.

(iv) You must use Method 2 of appendix A to part 60 of this chapter to determine the volumetric flow rate of the effluent gas. A velocity traverse must be conducted at the beginning and end of each run. The arithmetic average of the two measurements must be used to calculate the volumetric flow rate (Q_{sd}) for the run. For the determination of the effluent gas molecular weight, a single integrated sample over the 4-hour period may be taken and analyzed or grab samples at 1-hour intervals may be taken, analyzed, and averaged. For the moisture content, you must take two samples of at least 0.10 dscm (3.5 dscf) and 10 minutes at the beginning of the 4-hour run and near the end of the time period. The arithmetic average of the two runs must be the moisture content for the run.

§ 60.5407 What are the requirements for monitoring of emissions and operations from my sweetening unit affected facilities at onshore natural gas processing plants?

(a) If your sweetening unit affected facility is located at an onshore natural gas processing plant and is subject to the provisions of § 60.5405(a) or (b) you must install, calibrate, maintain, and operate monitoring devices or perform measurements to determine the following operations information on a daily basis:

(1) *The accumulation of sulfur product over each 24-hour period.* The monitoring method may incorporate the use of an instrument to measure and record the liquid sulfur production rate, or may be a procedure for measuring and recording the sulfur liquid levels in the storage tanks with a level indicator or by manual soundings, with subsequent calculation of the sulfur production rate based on the tank geometry, stored sulfur density, and elapsed time between readings. The method must be designed to be accurate within ± 2 percent of the 24-hour sulfur accumulation.

(2) *The H_2S concentration in the acid gas from the sweetening unit for each 24-hour period.* At least one sample per 24-hour period must be collected and analyzed using the equation specified in § 60.5406(b)(1). The Administrator may require you to demonstrate that the H_2S concentration obtained from one or more samples over a 24-hour period is

within ± 20 percent of the average of 12 samples collected at equally spaced intervals during the 24-hour period. In instances where the H_2S concentration of a single sample is not within ± 20 percent of the average of the 12 equally spaced samples, the Administrator may require a more frequent sampling schedule.

(3) *The average acid gas flow rate from the sweetening unit.* You must install and operate a monitoring device to continuously measure the flow rate of acid gas. The monitoring device reading must be recorded at least once per hour during each 24-hour period. The average acid gas flow rate must be computed from the individual readings.

(4) *The sulfur feed rate (X).* For each 24-hour period, you must compute X using the equation specified in § 60.5406(b)(3).

(5) *The required sulfur dioxide emission reduction efficiency for the 24-hour period.* You must use the sulfur feed rate and the H_2S concentration in the acid gas for the 24-hour period, as applicable, to determine the required reduction efficiency in accordance with the provisions of § 60.5405(b).

(b) Where compliance is achieved through the use of an oxidation control system or a reduction control system followed by a continually operated incineration device, you must install, calibrate, maintain, and operate monitoring devices and continuous emission monitors as follows:

(1) *A continuous monitoring system to measure the total sulfur emission rate (E) of SO_2 in the gases discharged to the atmosphere.* The SO_2 emission rate must be expressed in terms of equivalent sulfur mass flow rates (kg/hr (lb/hr)). The span of this monitoring system must be set so that the equivalent emission limit of § 60.5405(b) will be between 30 percent and 70 percent of the measurement range of the instrument system.

(2) Except as provided in paragraph (b)(3) of this section: A monitoring device to measure the temperature of the gas leaving the combustion zone of the incinerator, if compliance with § 60.5405(a) is achieved through the use of an oxidation control system or a reduction control system followed by a continually operated incineration device. The monitoring device must be certified by the manufacturer to be accurate to within ± 1 percent of the temperature being measured.

(3) When performance tests are conducted under the provision of § 60.8 to demonstrate compliance with the standards under § 60.5405, the temperature of the gas leaving the incinerator combustion zone must be determined using the monitoring device. If the volumetric ratio of sulfur dioxide to sulfur dioxide plus total reduced sulfur (expressed as SO_2) in the gas leaving the incinerator is equal to or less than 0.98, then temperature monitoring may be used to demonstrate that sulfur dioxide emission monitoring is sufficient to determine total sulfur emissions. At all times during the operation of the facility, you must maintain the average temperature of the gas leaving the combustion zone of the incinerator at or above the appropriate level determined during the most recent performance test to ensure the sulfur compound oxidation criteria are met. Operation at lower average temperatures may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility. You may request that the minimum incinerator temperature be reestablished by conducting new performance tests under § 60.8.

(4) Upon promulgation of a performance specification of continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants, you may, as an alternative to paragraph (b)(2) of this section, install, calibrate, maintain, and operate a continuous emission monitoring system for total reduced sulfur compounds as required in paragraph (d) of this section in addition to a sulfur dioxide emission monitoring system. The sum of the equivalent sulfur mass emission rates from the two monitoring systems must be used to compute the total sulfur emission rate (E).

(c) Where compliance is achieved through the use of a reduction control system not followed by a continually operated incineration device, you must install, calibrate, maintain, and operate a continuous monitoring system to measure the emission rate of reduced sulfur compounds as SO_2 equivalent in the gases discharged to the atmosphere. The SO_2 equivalent compound emission rate must be expressed in terms of equivalent sulfur mass flow rates (kg/hr (lb/hr)). The span of this monitoring system must be set so that the equivalent emission limit of § 60.5405(b) will be between 30 and 70 percent of the measurement range of the system. This requirement becomes effective upon promulgation of a performance specification for continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants.

(d) For those sources required to comply with paragraph (b) or (c) of this section, you must calculate the average sulfur emission reduction efficiency achieved (R) for each 24-hour clock internal. The 24-hour interval may begin and end at any selected clock time, but must be consistent. You must compute the 24-hour average reduction efficiency (R) based on the 24-hour average sulfur production rate (S) and sulfur emission rate (E), using the equation in § 60.5406(c)(1).

(1) You must use data obtained from the sulfur production rate monitoring device specified in paragraph (a) of this section to determine S.

(2) You must use data obtained from the sulfur emission rate monitoring systems specified in paragraphs (b) or (c) of this section to calculate a 24-hour average for the sulfur emission rate (E). The monitoring system must provide at least one data point in each successive 15-minute interval. You must use at least two data points to calculate each 1-hour average. You must use a minimum of 18 1-hour averages to compute each 24-hour average.

(e) In lieu of complying with paragraphs (b) or (c) of this section, those sources with a design capacity of less than 152 Mg/D (150 LT/D) of H_2S expressed as sulfur may calculate the sulfur emission reduction efficiency achieved for each 24-hour period by:

$$R = \frac{K_2 S}{X}$$

Where:

R = The sulfur dioxide removal efficiency achieved during the 24-hour period, percent.

K_2 = Conversion factor, 0.02400 Mg/D per kg/hr (0.01071 LT/D per lb/hr).

S = The sulfur production rate during the 24-hour period, kg/hr (lb/hr).

X = The sulfur feed rate in the acid gas, Mg/D (LT/D).

(f) The monitoring devices required in paragraphs (b)(1), (b)(3) and (c) of this section must be calibrated at least annually according to the manufacturer's specifications, as required by § 60.13(b).

(g) The continuous emission monitoring systems required in paragraphs (b)(1), (b)(3), and (c) of this section must be subject to the emission monitoring requirements of § 60.13 of the General Provisions. For conducting the continuous emission monitoring system performance evaluation required by § 60.13(c), Performance Specification 2 of appendix B to part 60 of this chapter must apply, and Method 6 must be used for systems required by paragraph (b) of this section.

§ 60.5408 What is an optional procedure for measuring hydrogen sulfide in acid gas—Tutwiler Procedure? [1]

(a) When an instantaneous sample is desired and H_2S concentration is ten grains per 1000 cubic foot or more, a 100 ml Tutwiler burette is used. For concentrations less than ten grains, a 500 ml Tutwiler burette and more dilute solutions are used. In principle, this method consists of titrating hydrogen sulfide in a gas sample directly with a standard solution of iodine.

(b) *Apparatus.* (See Figure 1 of this subpart) A 100 or 500 ml capacity Tutwiler burette, with two-way glass stopcock at bottom and three-way stopcock at top which connect either with inlet tubulature or glass-stoppered cylinder, 10 ml capacity, graduated in 0.1 ml subdivision; rubber tubing connecting burette with leveling bottle.

(c) *Reagents.* (1) Iodine stock solution, 0.1N. Weight 12.7 g iodine, and 20 to 25 g cp potassium iodide for each liter of solution. Dissolve KI in as little water as necessary; dissolve iodine in concentrated KI solution, make up to proper volume, and store in glass-stoppered brown glass bottle.

(2) Standard iodine solution, 1 ml = 0.001771 g I. Transfer 33.7 ml of above 0.1N stock solution into a 250 ml volumetric flask; add water to mark and mix well. Then, for 100 ml sample of gas, 1 ml of standard iodine solution is equivalent to 100 grains H_2S per cubic feet of gas.

(3) Starch solution. Rub into a thin paste about one teaspoonful of wheat starch with a little water; pour into about a pint of boiling water; stir; let cool and decant off clear solution. Make fresh solution every few days.

(d) *Procedure.* Fill leveling bulb with starch solution. Raise (L), open cock (G), open (F) to (A), and close (F) when solutions starts to run out of gas inlet. Close (G). Purge gas sampling line and connect with (A). Lower (L) and open (F) and (G). When liquid level is several ml past the 100 ml mark, close (G) and (F), and disconnect sampling tube. Open (G) and bring starch solution to 100 ml mark by raising (L); then close (G). Open (F) momentarily, to bring gas in burette to atmospheric pressure, and close (F). Open (G), bring liquid level down to 10 ml mark by lowering (L). Close (G), clamp rubber tubing near (E) and disconnect it from burette. Rinse graduated cylinder with a standard iodine solution (0.00171 g I per ml); fill cylinder and record reading. Introduce successive small amounts of iodine thru (F); shake well after each addition; continue until a faint permanent blue color is obtained. Record reading; subtract from previous reading, and call difference D.

(e) With every fresh stock of starch solution perform a blank test as follows: Introduce fresh starch solution into burette up to 100 ml mark. Close (F) and (G). Lower (L) and open (G). When liquid level reaches the 10 ml mark, close (G). With air in burette, titrate as during a test and up to same end point. Call ml of iodine used C. Then,

$$\text{Grains } H_2S \text{ per 100 cubic foot of gas} = 100\,(D - C)$$

(f) Greater sensitivity can be attained if a 500 ml capacity Tutwiler burette is used with a more dilute (0.001N) iodine solution. Concentrations less than 1.0 grains per 100 cubic foot can be determined in this way. Usually, the starch-iodine end point is much less distinct, and a blank determination of end point, with H_2S-free gas or air, is required.

BILLING CODE 6560–50–P

[1] Gas Engineers Handbook, Fuel Gas Engineering practices, The Industrial Press, 93 Worth Street, New York, NY, 1966, First Edition, Second Printing, page 6/25 (Docket A–80–20–A, Entry II–I–67).

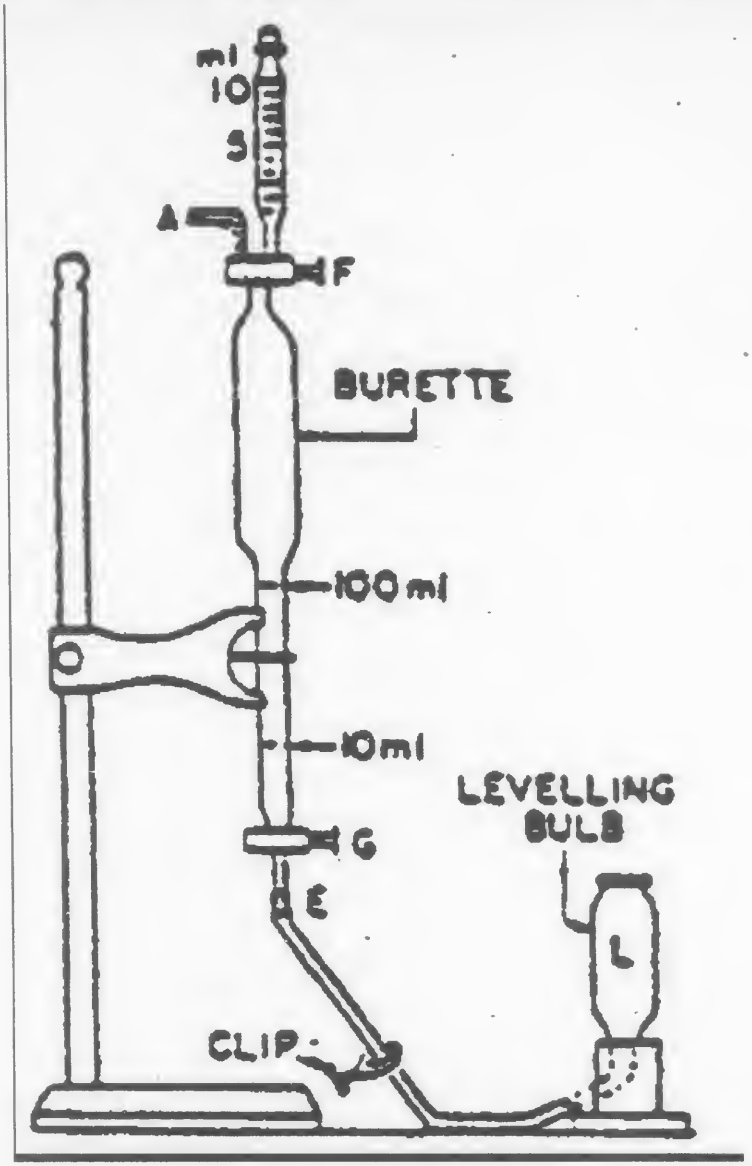

Figure 1. Tutwiler burette (lettered items mentioned in text).

BILLING CODE 6560–50–C

§ 60.5410 How do I demonstrate initial compliance with the standards for my gas wellhead affected facility, my centrifugal compressor affected facility, my reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my affected facilities at onshore natural gas processing plants?

You must determine initial compliance with the standards for each affected facility using the requirements in paragraphs (a) through (g) of this section. The initial compliance period begins on the date of publication of the final rule in the **Federal Register** or upon initial startup, whichever is later, and ends on the date the first annual report is due as specified in § 60.5420(b).

(a) You have achieved initial compliance with standards for each well completion operation conducted at your gas wellhead affected facility if you have complied with paragraphs (a)(1) and (a)(2) of this section.

(1) You have notified the Administrator within 30 days of the commencement of the well completion operation, the date of the commencement of the well completion operation, the latitude and longitude coordinates of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum (NAD) of 1983.

(2) You have maintained a log of records as specified in § 60.5375(b) or (f) for each well completion operation conducted during the initial compliance period.

(3) You have submitted the initial annual report for your wellhead affected facility as required in § 60.5420(b).

(b) You have achieved initial compliance with standards for your centrifugal compressor affected facility if the centrifugal compressor is fitted with a dry seal system upon initial startup as required by § 60.5380.

(c) You have achieved initial compliance with standards for each reciprocating compressor affected facility if you have complied with paragraphs (c)(1) and (c)(2) of this section.

(1) During the initial compliance period, you have continuously monitored the number of hours of operation.

(2) You have included the cumulative number of hours of operation for your reciprocating compressor affected facility during the initial compliance period in your initial annual report required in § 60.5420(b).

(d) You have achieved initial compliance with emission standards for your pneumatic controller affected facility if you comply with the requirements specified in paragraphs (d)(1) through (d)(4) of this section.

(1) You have demonstrated, to the Administrator's satisfaction, the use of a high bleed device is predicated as specified in § 60.5490(a).

(2) You own or operate a pneumatic controller affected facility located at a natural gas processing plant and your pneumatic controller is driven other than by use of natural gas and therefore emits zero natural gas.

(3) You own or operate a pneumatic controller affected facility not located at a natural gas processing plant and the manufacturer's design specifications guarantee the controller emits less than or equal to 6.0 standard cubic feet of gas per hour.

(4) You have included the information in paragraphs (d)(1) through (d)(3) of this section in the initial annual report submitted for your pneumatic controller affected facilities according to the requirements of § 60.5420(b).

(e) You have demonstrated initial compliance with emission standards for your storage vessel affected facility if you are complying with paragraphs (e)(1) through (e)(7) of this section.

(1) You have equipped the storage vessel with a closed vent system that meets the requirements of § 63.771(c) of this chapter connected to a control device that meets the conditions specified in § 63.771(d).

(2) You have conducted an initial performance test as required in § 63.772(e) of this chapter within 180 days after initial startup or the date of publication of the final rule in the **Federal Register** and have conducted the compliance demonstration in § 63.772(f).

(3) You have conducted the initial inspections required in § 63.773(c) of this chapter.

(4) You have installed and operated continuous parameter monitoring systems in accordance with § 63.773(d) of this chapter.

(5) If you are exempt from the standards of § 60.5395 according to § 60.5395(a)(1) or (a)(2), you have determined the condensate or crude oil throughput, as applicable, according to paragraphs (e)(5)(i) or (e)(5)(ii) of this section and demonstrated to the Administrator's satisfaction that your annual average condensate throughput is less than 1 barrel per day per tank and your annual average crude oil throughput is less than 20 barrels per day per tank.

(i) You have installed and operated a flow meter to measure condensate or crude oil throughput in accordance with the manufacturer's procedures or specifications.

(ii) You have used any other method approved by the Administrator to determine annual average condensate or crude oil throughput.

(6) You have submitted the information in paragraphs (e)(1) through (e)(5) of this section in the initial annual report for your storage vessel affected facility as required in § 60.5420(b).

(f) For affected facilities at onshore natural gas processing plants, initial compliance with the VOC requirements is demonstrated if you are in compliance with the requirements of § 60.5400.

(g) For sweetening unit affected facilities at onshore natural gas processing plants, initial compliance is demonstrated according to paragraphs (g)(1) through (g)(3) of this section.

(1) To determine compliance with the standards for SO_2 specified in § 60.5405(a), during the initial performance test as required by § 60.8, the minimum required sulfur dioxide emission reduction efficiency (Z_i) is compared to the emission reduction efficiency (R) achieved by the sulfur recovery technology as specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section.

(i) If $R \geq Z_i$, your affected facility is in compliance.

(ii) If $R < Z_i$, your affected facility is not in compliance.

(2) The emission reduction efficiency (R) achieved by the sulfur reduction technology must be determined using the procedures in § 60.5406(c)(1).

(3) You have submitted the results of paragraphs (g)(1) and (g)(2) of this section in the initial annual report submitted for your sweetening unit affected facilities at onshore natural gas processing plants.

§ 60.5415 How do I demonstrate continuous compliance with the standards for my gas wellhead affected facility, my centrifugal compressor affected facility, my stationary reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my affected facilities at onshore natural gas processing plants?

(a) For each gas wellhead affected facility, you must demonstrate continuous compliance by maintaining the records for each completion operation (as defined in § 60.5430) specified in § 60.5420.

(b) For each centrifugal compressor affected facility, continuous compliance is demonstrated if the rotating compressor shaft is equipped with a dry seal.

(c) For each reciprocating compressor affected facility, you have demonstrated continuous compliance according to paragraphs (c)(1) and (2) of this section

(1) You have continuously monitored the number of hours of operation for each reciprocating compressor affected facility since initial startup, or the date of publication of the final rule in the **Federal Register**, or the date of the previous reciprocating compressor rod packing replacement, whichever is later. The cumulative number of hours of operation must be included in the annual report as required in § 60.5420(b)(4).

(2) You have replaced the reciprocating compressor rod packing before the total number of hours of operation reaches 26,000 hours.

(d) For each pneumatic controller affected facility, continuous compliance is demonstrated by maintaining the records demonstrating that you have installed and operated the pneumatic controllers as required in § 60.5390(a), (b) or (c).

(e) For each storage vessel affected facility, continuous compliance is demonstrated according to § 63.772(f) of this chapter.

(f) For affected facilities at onshore natural gas processing plants, continuous compliance with VOC requirements is demonstrated if you are in compliance with the requirements of § 60.5400.

(g) For each sweetening unit affected facility at onshore natural gas processing plants, you must demonstrate continuous compliance with the standards for SO_2 specified in

§ 60.5405(b) according to paragraphs (g)(1) and (g)(2) of this section.

(1) The minimum required SO_2 emission reduction efficiency (Z_c) is compared to the emission reduction efficiency (R) achieved by the sulfur recovery technology.

(i) If $R \geq Z_c$, your affected facility is in compliance.

(ii) If $R < Z_c$, your affected facility is not in compliance.

(2) The emission reduction efficiency (R) achieved by the sulfur reduction technology must be determined using the procedures in § 60.5406(c)(1).

(h) *Affirmative defense for exceedance of emission limit during malfunction.* In response to an action to enforce the standards set forth in §§ 60.5375, 60.5380, 60.5385, 60.5390, 60.5395, 60.5400, and 60.5405, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 60.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in § 60.5420(a), and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standards in §§ 60.5375, 60.5380, 60.5385, 60.5390, 60.5395, and 60.5400 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

§ 60.5420 What are my notification, reporting, and recordkeeping requirements?

(a) You must submit the notifications required in § 60.7(a)(1), (a)(3) and (a)(4), and according to paragraphs (a)(1) and (a)(2) of this section, if you own or operate one or more of the affected facilities specified in § 60.5365. For the purposes of this subpart, a workover that occurs after August 23, 2011 at each affected facility for which construction, reconstruction, or modification commenced on or before August 23, 2011 is considered a modification for which a notification must be submitted under § 60.7(a)(4).

(1) If you own or operate a pneumatic controller affected facility you are not required to submit the notifications required in § 60.7(a)(1), (a)(3) and (a)(4).

(2) If you own or operate a gas wellhead affected facility, you must submit a notification to the Administrator within 30 days of the commencement of the well completion operation. The notification must include the date of commencement of the well completion operation, the latitude and longitude coordinates of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(b) *Reporting requirements.* You must submit annual reports containing the information specified in paragraphs (b)(1) through (b)(6) of this section to the Administrator. The initial annual report is due 1 year after the initial startup date for your affected facility or 1 year after the date of publication of the final rule in the **Federal Register**, whichever is later. Subsequent annual reports are due on the same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (b)(6) of this section.

(1) The general information specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(i) The company name and address of the affected facility.

(ii) An identification of each affected facility being included in the annual report.

(iii) Beginning and ending dates of the reporting period.

(2) For each gas wellhead affected facility, the information in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(i) An identification of each well completion operation, as defined in § 60.5430, for each gas wellhead affected facility conducted during the reporting period;

(ii) A record of deviations in cases where well completion operations with hydraulic fracturing were not performed in compliance with the requirements

specified in § 60.5375 for each gas well affected facility.

(iii) Records specified in § 60.5375(b) for each well completion operation that occurred during the reporting period.

(3) For each centrifugal compressor affected facility installed during the reporting period, documentation that the centrifugal compressor is equipped with dry seals.

(4) For each reciprocating compressor affected facility, the information specified in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

(i) The cumulative number of hours or operation since initial startup, the date of publication of the final rule in the **Federal Register**, or since the previous reciprocating compressor rod packing replacement, whichever is later.

(ii) Documentation that the reciprocating compressor rod packing was replaced before the cumulative number of hours of operation reached 24,000 hours.

(5) For each pneumatic controller affected facility, the information specified in paragraphs (b)(5)(i) through (b)(5)(iv) of this section.

(i) The date, location and manufacturer specifications for each pneumatic controller installed.

(ii) If applicable, documentation that the use of high bleed pneumatic devices is predicated and the reasons why.

(iii) For pneumatic controllers not installed at a natural gas processing plant, the manufacturer's guarantee that the device is designed such that natural gas emissions are less than 6 standard cubic feet per hour.

(iv) For pneumatic controllers installed at a natural gas processing plant, documentation that each controllers has zero natural gas emissions.

(6) For each storage vessel affected facility, the information in paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(i) If required to reduce emissions by complying with § 60.5395(a)(1), the records specified in § 63.774(b)(2) through (b)(8) of this chapter.

(ii) Documentation that the annual average condensate throughput is less than 1 barrel per day per storage vessel and crude oil throughput is less than 21 barrels per day per storage for meeting the requirements in § 60.5395(a)(1) or (a)(2).

(c) *Recordkeeping requirements.* You must maintain the records identified as specified in § 60.7(f) and in paragraphs (c)(1) through (c)(5) of this section

(1) The records for each gas wellhead affected facility as specified in paragraphs (c)(1)(i) through (c)(1)(iii).

(i) Records identifying each well completion operation for each gas wellhead affected facility conducted during the reporting period;

(ii) Record of deviations in cases where well completion operations with hydraulic fracturing were not performed in compliance with the requirements specified in § 60.5375.

(iii) Records required in § 60.5375(b) or (f) for each well completion operation conducted for each gas wellhead affected facility that occurred during the reporting period. You must maintain the records specified in paragraphs (c)(1)(iii)(A) and (c)(1)(iii)(B) of this section.

(A) For each gas wellheads affected facility required to comply with the requirements of § 60.5375(a), you must record: The location of the well; the duration of flowback; duration of recovery to the sales line; duration of combustion; duration of venting; and specific reasons for venting in lieu of capture or combustion. The duration must be specified in hours of time.

(B) For each gas wellhead affected facility required to comply with the requirements of § 60.5375(f), you must maintain the records specified in paragraph (c)(1)(iii)(A) of this section except that you do not have to record the duration of recovery to the sales line. In addition, you must record the distance, in miles, of the nearest gathering line.

(2) For each centrifugal compressor affected facility, you must maintain records on the type of seal system installed.

(3) For each reciprocating compressors affected facility, you must maintain the records in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) Records of the cumulative number of hours of operation since initial startup or the date of publication of the final rule in the **Federal Register**, or the previous replacement of the reciprocating compressor rod packing, whichever is later.

(ii) Records of the date and time of each reciprocating compressor rod packing replacement.

(4) For each pneumatic controller affected facility, you must maintain the records identified in paragraphs (c)(4)(i) through (c)(4)(iv) of this section.

(i) Records of the date, location and manufacturer specifications for each pneumatic controller installed.

(ii) Records of the determination that the use of high bleed pneumatic devices is predicated and the reasons why.

(iii) If the pneumatic controller affected facility is not located at a natural gas processing plant, records of the manufacturer's guarantee that the device is designed such that natural gas emissions are less than 6 standard cubic feet per hour.

(iv) If the pneumatic controller affected facility is located at a natural gas processing plant, records of the documentation that only instrument air controllers are used.

(5) For each storage vessel affected facility, you must maintain the records identified in paragraphs (c)(5)(i) and (c)(5)(ii) of this section.

(i) If required to reduce emissions by complying with § 63.766, the records specified in § 63.774(b)(2) through (8) of this chapter.

(ii) Records of the determination that the annual average condensate throughput is less than 1 barrel per day per storage vessel and crude oil throughput is less than 21 barrels per day per storage vessel for the exemption under § 60.5395(a)(1) and (a)(2).

§ 60.5421 What are my additional recordkeeping requirements for my affected facility subject to VOC requirements for onshore natural gas processing plants?

(a) You must comply with the requirements of paragraph (b) of this section in addition to the requirements of § 60.486a.

(b) The following recordkeeping requirements apply to pressure relief devices subject to the requirements of § 60.5401(b)(1) of this subpart.

(1) When each leak is detected as specified in § 60.5401(b)(2), a weatherproof and readily visible identification, marked with the equipment identification number, must be attached to the leaking equipment. The identification on the pressure relief device may be removed after it has been repaired.

(2) When each leak is detected as specified in § 60.5401(b)(2), the following information must be recorded in a log and shall be kept for 2 years in a readily accessible location:

(i) The instrument and operator identification numbers and the equipment identification number.

(ii) The date the leak was detected and the dates of each attempt to repair the leak.

(iii) Repair methods applied in each attempt to repair the leak.

(iv) "Above 500 ppm" if the maximum instrument reading measured by the methods specified in paragraph (a) of this section after each repair attempt is 500 ppm or greater.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(vi) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(vii) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(viii) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(ix) The date of successful repair of the leak.

(x) A list of identification numbers for equipment that are designated for no detectable emissions under the provisions of § 60.482–4a(a). The designation of equipment subject to the provisions of § 60.482–4a(a) must be signed by the owner or operator.

§ 60.5422 What are my additional reporting requirements for my affected facility subject to VOC requirements for onshore natural gas processing plants?

(a) You must comply with the requirements of paragraphs (b) and (c) of this section in addition to the requirements of § 60.487a(a), (b), (c)(2)(i) through (iv), and (c)(2)(vii) through (viii).

(b) An owner or operator must include the following information in the initial semiannual report in addition to the information required in § 60.487a(b)(1) through (4): Number of pressure relief devices subject to the requirements of § 60.5401(b) except for those pressure relief devices designated for no detectable emissions under the provisions of § 60.482–4a(a) and those pressure relief devices complying with § 60.482–4a(c).

(c) An owner or operator must include the following information in all semiannual reports in addition to the information required in § 60.487a(c)(2)(i) through (vi):

(1) Number of pressure relief devices for which leaks were detected as required in § 60.5401(b)(2); and

(2) Number of pressure relief devices for which leaks were not repaired as required in § 60.5401(b)(3).

§ 60.5423 What additional recordkeeping and reporting requirements apply to my sweetening unit affected facilities at onshore natural gas processing plants?

(a) You must retain records of the calculations and measurements required in § 60.5405(a) and (b) and § 60.5407(a) through (g) for at least 2 years following the date of the measurements. This requirement is included under § 60.7(d) of the General Provisions.

(b) You must submit a written report of excess emissions to the Administrator semiannually. For the purpose of these reports, excess emissions are defined as:

(1) Any 24-hour period (at consistent intervals) during which the average sulfur emission reduction efficiency (R) is less than the minimum required efficiency (Z).

(2) For any affected facility electing to comply with the provisions of § 60.5407(b)(2), any 24-hour period during which the average temperature of the gases leaving the combustion zone of an incinerator is less than the appropriate operating temperature as determined during the most recent performance test in accordance with the provisions of § 60.5407(b)(2). Each 24-hour period must consist of at least 96 temperature measurements equally spaced over the 24 hours.

(c) To certify that a facility is exempt from the control requirements of these standards, for each facility with a design capacity less that 2 LT/D of H_2S in the acid gas (expressed as sulfur) you must keep, for the life of the facility, an analysis demonstrating that the facility's design capacity is less than 2 LT/D of H_2S expressed as sulfur.

(d) If you elect to comply with § 60.5407(e) you must keep, for the life of the facility, a record demonstrating that the facility's design capacity is less than 150 LT/D of H_2S expressed as sulfur.

(e) The requirements of paragraph (b) of this section remain in force until and unless the EPA, in delegating enforcement authority to a state under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such state. In that event, affected sources within the state will be relieved of obligation to comply with paragraph (b) of this section, provided that they comply with the requirements established by the state.

§ 60.5425 What part of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions in §§ 60.1 through 60.19 apply to you.

§ 60.5430 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in subpart A or subpart VVa of part 60; and the following terms shall have the specific meanings given them.

Acid gas means a gas stream of hydrogen sulfide (H_2S) and carbon dioxide (CO_2) that has been separated from sour natural gas by a sweetening unit.

Alaskan North Slope means the approximately 69,000 square-mile area extending from the Brooks Range to the Arctic Ocean.

API Gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Centrifugal compressor means a piece of equipment that compresses a process gas by means of mechanical rotating vanes or impellers.

City gate means the delivery point at which natural gas is transferred from a transmission pipeline to the local gas utility.

Completion combustion device means any ignition device, installed horizontally or vertically, used in exploration and production operations to combust otherwise vented emissions from completions or workovers.

Compressor means a piece of equipment that compresses process gas and is usually a centrifugal compressor or a reciprocating compressor.

Compressor station means any permanent combination of compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Condensate means a hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and remains liquid at standard conditions, as specified in § 60.2. For the purposes of this subpart, a hydrocarbon liquid with an API gravity equal to or greater than 40 degrees is considered condensate.

Crude oil means crude petroleum oil or any other hydrocarbon liquid, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir. For the purposes of this subpart, a hydrocarbon liquid with an API gravity less than 40 degrees is considered crude oil.

Dehydrator means a device in which an absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber).

Delineation well means a well drilled in order to determine the boundary of a field or producing reservoir.

Equipment means each pump, pressure relief device, open-ended valve or line, valve, compressor, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart.

Field gas means feedstock gas entering the natural gas processing plant.

Field gas gathering means the system used to transport field gas from a field to the main pipeline in the area.

Flare means a thermal oxidation system using an open (without enclosure) flame.

Flowback means the process of allowing fluids to flow from the well following a treatment, either in

preparation for a subsequent phase of treatment or in preparation for cleanup and returning the well to production.

Flow line means surface pipe through which oil and/or natural gas travels from the well.

Gas-driven pneumatic controller means a pneumatic controller powered by pressurized natural gas.

Gas processing plant process unit means equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

Gas well means a well, the principal production of which at the mouth of the well is gas.

High-bleed pneumatic devices means automated, continuous bleed flow control devices powered by pressurized natural gas and used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature. Part of the gas power stream which is regulated by the process condition flows to a valve actuator controller where it vents continuously (bleeds) to the atmosphere at a rate in excess of six standard cubic feet per hour.

Hydraulic fracturing means the process of directing pressurized liquids, containing water, proppant, and any added chemicals, to penetrate tight sand, shale, or coal formations that involve high rate, extended back flow to expel fracture fluids and sand during completions and well workovers.

In light liquid service means that the piece of equipment contains a liquid that meets the conditions specified in § 60.485a(e) or § 60.5401(h)(2) of this part.

In wet gas service means that a compressor or piece of equipment contains or contacts the field gas before the extraction step at a gas processing plant process unit.

Liquefied natural gas unit means a unit used to cool natural gas to the point at which it is condensed into a liquid which is colorless, odorless, non-corrosive and non-toxic.

Low-bleed pneumatic controller means automated flow control devices powered by pressurized natural gas and used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature. Part of the gas power stream which is regulated by the process condition flows to a valve actuator controller where it vents continuously (bleeds) to the atmosphere at a rate equal to or less than six standard cubic feet per hour.

Modification means any physical change in, or change in the method of operation of, an affected facility which increases the amount of VOC or natural gas emitted into the atmosphere by that facility or which results in the emission of VOC or natural gas into the atmosphere not previously emitted. For the purposes of this subpart, each recompletion of a fractured or refractured existing gas well is considered to be a modification.

Natural gas liquids means the hydrocarbons, such as ethane, propane, butane, and pentane that are extracted from field gas.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both.

Nonfractionating plant means any gas plant that does not fractionate mixed natural gas liquids into natural gas products.

Non gas-driven pneumatic device means an instrument that is actuated using other sources of power than pressurized natural gas; examples include solar, electric, and instrument air.

Onshore means all facilities except those that are located in the territorial seas or on the outer continental shelf.

Plunger lift system means an intermittent gas lift that uses gas pressure buildup in the casing-tubing annulus to push a steel plunger, and the column of fluid ahead of it, up the well tubing to the surface.

Pneumatic controller means an automated instrument used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature.

Pneumatic pump means a pump that uses pressurized natural gas to move a piston or diaphragm, which pumps liquids on the opposite side of the piston or diaphragm.

Process unit means components assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

Reciprocating compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the driveshaft.

Reciprocating compressor rod packing means a series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere.

Reduced emissions completion means a well completion where gas flowback that is otherwise vented is captured, cleaned, and routed to the sales line.

Reduced emissions recompletion means a well completion following refracturing of a gas well where gas flowback that is otherwise vented is captured, cleaned, and routed to the sales line.

Reduced sulfur compounds means H_2S, carbonyl sulfide (COS), and carbon disulfide (CS_2).

Routed to a process or route to a process means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Salable quality gas means natural gas that meets the composition, moisture, or other limits set by the purchaser of the natural gas.

Sales line means pipeline, generally small in diameter, used to transport oil or gas from the well to a processing facility or a mainline pipeline.

Storage vessel means a stationary vessel or series of stationary vessels that are either manifolded together or are located at a single well site and that have potential for VOC emissions equal to or greater than 10 tpy.

Sulfur production rate means the rate of liquid sulfur accumulation from the sulfur recovery unit.

Sulfur recovery unit means a process device that recovers element sulfur from acid gas.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Sweetening unit means a process device that removes hydrogen sulfide and/or carbon dioxide from the natural gas stream.

Total Reduced Sulfur (TRS) means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide as measured by Method 16 of appendix A to part 60 of this chapter.

Total SO_2 equivalents means the sum of volumetric or mass concentrations of

the sulfur compounds obtained by adding the quantity existing as SO_2 to the quantity of SO_2 that would be obtained if all reduced sulfur compounds were converted to SO_2 (ppmv or kg/dscm (lb/dscf)).

Underground storage tank means a storage tank stored below ground.

Well means an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

Well completion means the process that allows for the flow of petroleum or natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, steps which may vent produced gas to the atmosphere via an open pit or tank. Well completion also involves connecting the well bore to the reservoir, which may include treating the formation or installing tubing, packer(s), or lifting equipment.

Well completion operation means any well completion or well workover occurring at a gas wellhead affected facility.

Well site means the areas that are directly disturbed during the drilling and subsequent operation of, or affected by, production facilities directly associated with any oil well, gas well, or injection well and its associated well pad.

Wellhead means the piping, casing, tubing and connected valves protruding above the earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve. The wellhead does not include other equipment at the well site except for any conveyance through which gas is vented to the atmosphere.

Wildcat well means a well outside known fields or the first well drilled in an oil or gas field where no other oil and gas production exists.

TABLE 1 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM INITIAL SO_2 EMISSION REDUCTION EFFICIENCY (Z_i)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	$2.0 \le X \le 5.0$	$5.0 < X \le 15.0$	$15.0 < X \le 300.0$	$X > 300.0$
$Y \ge 50$	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 99.9, whichever is smaller		
$20 \le Y < 50$	79.0	$88.5X^{0.0101}Y^{0.0125}$ or 97.9, whichever is smaller		97.9
$10 \le Y < 20$	79.0	$88.5X^{0.0101}Y^{0.0125}$ ... or 97.9, whichever is smaller ...	93.5	93.5
$Y < 10$	79.0	79.0	79.0	79.0

TABLE 2 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM SO_2 EMISSION REDUCTION EFFICIENCY (Z_c)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	$2.0 \le X \le 5.0$	$5.0 < X \le 15.0$	$15.0 < X \le 300.0$	$X > 300.0$
$Y \ge 50$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 99.9, whichever is smaller		
$20 \le Y < 50$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 97.9, whichever is smaller		97.5
$10 \le Y < 20$	74.0	$85.35X^{0.0144}Y^{0.0128}$ ... or 90.8, whichever is smaller ...	90.8	90.8
$Y < 10$	74.0	74.0	74.0	74.0

E = The sulfur emission rate expressed as elemental sulfur, kilograms per hour (kg/hr) [pounds per hour (lb/hr)], rounded to one decimal place.

R = The sulfur emission reduction efficiency achieved in percent, carried to one decimal place.

S = The sulfur production rate, kilograms per hour (kg/hr) [pounds per hour (lb/hr)], rounded to one decimal place.

X = The sulfur feed rate from the sweetening unit (*i.e.*, the H_2S in the acid gas), expressed as sulfur, Mg/D(LT/D), rounded to one decimal place.

Y = The sulfur content of the acid gas from the sweetening unit, expressed as mole percent H_2S (dry basis) rounded to one decimal place.

Z = The minimum required sulfur dioxide (SO_2) emission reduction efficiency, expressed as percent carried to one decimal place. Z_i refers to the reduction efficiency required at the initial performance test. Z_c refers to the reduction efficiency required on a continuous basis after compliance with Z_i has been demonstrated.

TABLE 3 TO SUBPART OOOO OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

[As stated in § 60.5425, you must comply with the following applicable General Provisions]

General provisions citation	Subject of citation	Applies to subpart?	Explanation
§ 60.1	General applicability of the General Provisions	Yes.	
§ 60.2	Definitions	Yes.	Additional terms defined in § 60.5430.
§ 60.3	Units and abbreviations	Yes.	
§ 60.4	Address	Yes.	
§ 60.5	Determination of construction or modification	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and record keeping	Yes	Except that § 60.7 only applies as specified in § 60.5420(a).

TABLE 3 TO SUBPART OOOO OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

[As stated in § 60.5425, you must comply with the following applicable General Provisions]

General provisions citation	Subject of citation	Applies to subpart?	Explanation
§ 60.8	Performance tests	No	Performance testing is required for storage vessels as specified in 40 CFR part 63, subpart HH.
§ 60.9	Availability of information	Yes.	
§ 60.10	State authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	No	Requirements are specified in subpart OOOO.
§ 60.12	Circumvention	Yes.	
§ 60.13	Monitoring requirements	Yes	Continuous monitors are required for storage vessels.
§ 60.14	Modification	Yes.	
§ 60.15	Reconstruction	Yes.	
§ 60.16	Priority list	Yes.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements	Yes.	
§ 60.19	General notification and reporting requirement	Yes.	

PART 63—[AMENDED]

8. The authority citation for part 63 continues to read as follows:

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

9. Section 63.14 is amended by:

a. Adding paragraphs (b)(69), (b)(70), (b)(71) and (b)(72); and

b. Revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

* * * * *

(69) ASTM D1945–03(2010) Standard Test Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for §§ 63.772 and 63.1282.

(70) ASTM D5504–08 Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for §§ 63.772 and 63.1282.

(71) ASTM D3588–98(2003) Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, IBR approved for §§ 63.772 and 63.1282.

(72) ASTM D4891–89(2006) Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, IBR approved for §§ 63.772 and 63.1282.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981 IBR approved for §§ 63.309(k)(1)(iii), 63.771(e), 63.865(b), 63.1281(d), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), 63.11551(a)(2)(i)(C), 63.11646(a)(1)(iii), table 5 to subpart DDDDD of this part, and table 1 to subpart ZZZZZ of this part.

* * * * *

Subpart HH—[Amended]

10. Section 63.760 is amended by:

a. Revising paragraph (a)(1) introductory text;

b. Revising paragraph (a)(1)(iii);

c. Revising paragraph (a)(2);

d. Revising paragraph (b)(1)(ii);

e. Revising paragraph (f) introductory text;

f. Revising paragraph (f)(1);

g. Revising paragraph (f)(2); and

h. Adding paragraphs (f)(7), (f)(8), (f)(9) and (f)(10) to read as follows:

§ 63.760 Applicability and designation of affected source.

(a) * * *

(1) Facilities that are major or area sources of hazardous air pollutants (HAP) as defined in § 63.761. Emissions for major source determination purposes can be estimated using the maximum natural gas or hydrocarbon liquid throughput, as appropriate, calculated in paragraphs (a)(1)(i) through (iii) of this section. As an alternative to calculating the maximum natural gas or hydrocarbon liquid throughput, the owner or operator of a new or existing source may use the facility's design maximum natural gas or hydrocarbon liquid throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction in accordance with § 63.10(b)(3). A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels, and becomes a major source, must comply thereafter with all provisions of this subpart applicable to a major source starting on the applicable compliance date specified in paragraph (f) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

* * * * *

(iii) The owner or operator shall determine the maximum values for other parameters used to calculate emissions as the maximum for the period over which the maximum natural gas or hydrocarbon liquid throughput is determined in accordance with paragraph (a)(1)(i)(A) or (B) of this section. Parameters, other than glycol circulation rate, shall be based on either highest measured values or annual average. For estimating maximum potential emissions from glycol dehydration units, the glycol circulation rate used in the calculation shall be the unit's maximum rate under its physical and operational design consistent with the definition of potential to emit in § 63.2.

(2) Facilities that process, upgrade, or store hydrocarbon liquids prior to the point where hydrocarbon liquids enter either the Organic Liquids Distribution (Non-gasoline) or Petroleum Refineries source categories.

* * * * *

(b) * * *
(1) * * *
(ii) Each storage vessel;
* * * * *

(f) The owner or operator of an affected major source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1), (f)(2), and (f)(7) through (f)(10) of this section. The owner or operator of an affected area source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(3) through (f)(6) of this section.

(1) Except as specified in paragraphs (f)(7) through (10) of this section, the owner or operator of an affected major source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the applicable provisions of this subpart no later than June 17, 2002, except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) Except as specified in paragraphs (f)(7) through (10) of this section, the owner or operator of an affected major source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the applicable provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, other than production field facilities identified in (f)(9) of this section, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.
* * * * *

(7) Each affected small glycol dehydration unit and each storage vessel that is not a storage vessel with the potential for flash emissions located at a major source, that commenced construction before August 23, 2011 must achieve compliance no later than 3 years after the date of publication of the final rule in the **Federal Register**, except as provided in § 63.6(i).

(8) Each affected small glycol dehydration unit and each storage vessel that is not a storage vessel with the potential for flash emissions, both as defined in § 63.761, located at a major source, that commenced construction on or after August 23, 2011 must achieve compliance immediately upon initial startup or the date of publication of the final rule in the **Federal Register**, whichever is later.

(9) A production field facility, as defined in § 63.761, constructed before August 23, 2011 that was previously determined to be an area source but becomes a major source (as defined in paragraph 3 of the major source definition in § 63.761) on the date of publication of the final rule in the **Federal Register** must achieve compliance no later than 3 years after the date of publication of the final rule in the **Federal Register**, except as provided in § 63.6(i).

(10) Each large glycol dehydration unit, as defined in § 63.761, that has complied with the provisions of this subpart prior to August 23, 2011 by reducing its benzene emissions to less than 0.9 megagrams per year must achieve compliance no later than 90 days after the date of publication of the final rule in the **Federal Register**, except as provided in § 63.6(i).
* * * * *

11. Section 63.761 is amended by:

a. Adding, in alphabetical order, new definitions for the terms "affirmative defense," "BTEX," "flare," "large glycol dehydration units" and "small glycol dehydration units";

b. Revising the definitions for "associated equipment," "facility," "glycol dehydration unit baseline operations," and "temperature monitoring device"; and

c. Revising paragraph (3) of the definition for "major source" to read as follows:

§ 63.761 Definitions.
* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.
* * * * *

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels.
* * * * *

BTEX means benzene, toluene, ethyl benzene and xylene.
* * * * *

Facility means any grouping of equipment where hydrocarbon liquids are processed, upgraded (*i.e.*, remove impurities or other constituents to meet contract specifications), or stored; or where natural gas is processed, upgraded, or stored. For the purpose of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas, surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.
* * * * *

Flare means a thermal oxidation system using an open flame (*i.e.*, without enclosure).
* * * * *

Glycol dehydration unit baseline operations means operations representative of the large glycol dehydration unit operations as of June 17, 1999 and the small glycol dehydrator unit operations as of August 23, 2011. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (*i.e.*, at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.
* * * * *

Large glycol dehydration unit means a glycol dehydration unit with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90

Mg/yr, determined according to § 63.772(b).

* * * * *

Major source * * *

(3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage vessels shall be aggregated for a major source determination. For facilities that are not production field facilities, HAP emissions from all HAP emission units shall be aggregated for a major source determination.

* * * * * *

Small glycol dehydration unit means a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 85 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr, determined according to § 63.772(b).

* * * * *

Temperature monitoring device means an instrument used to monitor temperature and having a minimum accuracy of ± 1 percent of the temperature being monitored expressed in °C, or ± 2.5 °C, whichever is greater. The temperature monitoring device may measure temperature in degrees Fahrenheit or degrees Celsius, or both.

* * * * *

12. Section 63.762 is revised to read as follows:

§ 63.762 Startups and shutdowns.

(a) The provisions set forth in this subpart shall apply at all times.

(b) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup or shutdown, of the affected source or a portion thereof.

(c) During startups and shutdowns, the owner or operator shall implement measures to prevent or minimize excess emissions to the maximum extent practical.

(d) In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined in 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the affected source experiencing exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (d)(1) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

13. Section 63.764 is amended by:

a. Revising paragraph (c)(2) introductory text;

b. Revising paragraph (e)(1) introductory text;

c. Revising paragraph (i); and

d. Adding paragraph (j) to read as follows:

§ 63.764 General standards.

* * * * *

(c) * * *

(2) For each storage vessel subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(2)(i) through (iii) of this section.

* * * * *

(e) *Exemptions.* (1) The owner or operator of an area source is exempt from the requirements of paragraph (d) of this section if the criteria listed in paragraph (e)(1)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.774(d)(1).

* * * * *

(i) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified

time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, and a leak is detected, the owner or operator shall take further action as required by the applicable provisions of this subpart.

(j) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

14. Section 63.765 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(1);

c. Revising paragraph (c)(2); and

d. Revising paragraph (c)(3) to read as follows:

§ 63.765 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart that must be controlled for air emissions as specified in either paragraph (c)(1)(i) or paragraph (d)(1)(i) of § 63.764.

(b) * * *

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i), (ii), or (iii) of this section.

(i) The owner or operator of a large glycol dehydration unit, as defined in § 63.761, shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d).

(A) Connect the process vent to a control device or combination of control devices through a closed-vent system. The closed vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(f).

(B) Meet the emissions limit through process modifications in accordance with the requirements specified in § 63.771(e).

(C) Meet the emissions limit for each small glycol dehydration unit using a combination of process modifications and one or more control devices through the requirements specified in paragraphs (b)(1)(iii)(A) and (B) of this section.

(D) Demonstrate that the emissions limit is met through actual uncontrolled operation of the small glycol dehydration unit. Document operational parameters in accordance with the requirements specified in § 63.771(e) and emissions in accordance with the requirements specified in § 63.772(b)(2).

(ii) The owner or operator of a glycol dehydration unit located at an area source, that must be controlled as specified in § 63.764(d)(1)(i), shall connect the process vent to a control device or combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be reduced to a level less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d), except that the performance levels specified in § 63.771(d)(1)(i) and (ii) do not apply.

(iii) You must limit BTEX emissions from each small glycol dehydration unit process vent, as defined in § 63.761, to the limit determined in Equation 1 of this section. The limit must be met in accordance with one of the alternatives specified in paragraphs (b)(1)(iii)(A) through (D) of this section.

$$EL_{BTEX} = 1.10x10^{-4} * Throughput * C_{i,BTEX} * 365\ \frac{days}{yr} * \frac{1\ Mg}{1x10^{6}\ grams}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

1.10×10^{-4} = BTEX emission limit, grams BTEX/standard cubic meter = ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day;

$C_{i,BTEX}$ = BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

(iii) For each small glycol dehydration unit, BTEX emissions are reduced to a level less than the limit calculated by paragraph (b)(1)(iii) of this section.

15. Section 63.766 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(1); and

d. Revising paragraph (d) to read as follows:

§ 63.766 Storage vessel standards.

(a) This section applies to each storage vessel (as defined in § 63.761) subject to this subpart.

(b) The owner or operator of a storage vessel (as defined in § 63.761) shall comply with one of the control requirements specified in paragraphs (b)(1) and (2) of this section.

(1) The owner or operator shall equip the affected storage vessel with a cover that is connected, through a closed-vent system that meets the conditions specified in § 63.771(c), to a control device or a combination of control devices that meets any of the conditions specified in § 63.771(d). The cover shall be designed and operated in accordance with the requirements of § 63.771(b).

(d) This section does not apply to storage vessels for which the owner or operator is subject to and controlled under the requirements specified in 40

CFR part 60, subpart Kb; or the requirements specified under 40 CFR part 63 subparts G or CC.

16. Section 63.769 is amended by:

a. Revising paragraph (b);

b. Revising paragraph (c) introductory text; and

b. Revising paragraph (c)(8) to read as follows:

§ 63.769 Equipment leak standards.

* * * * *

(b) This section does not apply to ancillary equipment and compressors for which the owner or operator is subject to and controlled under the requirements specified in subpart H of this part; or the requirements specified in 40 CFR part 60, subpart KKK.

(c) For each piece of ancillary equipment and each compressor subject to this section located at an existing or new source, the owner or operator shall meet the requirements specified in 40 CFR part 61, subpart V, §§ 61.241 through 61.247, except as specified in paragraphs (c)(1) through (8) of this section, except for valves subject to § 61.247–2(b) a leak is detected if an instrument reading of 500 ppm or greater is measured.

* * * * *

(8) Flares, as defined in § 63.761, used to comply with this subpart shall comply with the requirements of § 63.11(b).

17. Section 63.771 is amended by:

a. Revising paragraph (c)(1) introductory text;

b. Revising the heading of paragraph (d);

c. Adding paragraph (d) introductory text;

d. Revising paragraph (d)(1)(i) introductory text;

e. Revising paragraph (d)(1)(i)(C);

f. Revising paragraph (d)(1)(ii);

g. Revising paragraph (d)(1)(iii);

h. Revising paragraph (d)(4)(i);

i. Revising paragraph (d)(5)(i);

j. Revising paragraph (e)(2);

k. Revising paragraph (e)(3) introductory text;

l. Revising paragraph (e)(3)(ii); and

m. Adding paragraph (f) to read as follows:

§ 63.771 Control equipment requirements.

* * * * *

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in an emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

* * * * *

(d) *Control device requirements for sources except small glycol dehydration units.* Owners and operators of small glycol dehydration units, shall comply with the control device requirements in paragraph (f) of this section.

(1) * * *

(i) An enclosed combustion device (*e.g.,* thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

* * * * *

(C) For a control device that can demonstrate a uniform combustion zone temperature during the performance test conducted under § 63.772(e), operates at a minimum temperature of 760 degrees C.

* * * * *

(ii) A vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.772(e).

(iii) A flare, as defined in § 63.761, that is designed and operated in accordance with the requirements of § 63.11(b).

* * * * *

(4) * * *

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the HAP emissions unit or units through the closed-vent system to the control device, as required under § 63.765, § 63.766, and § 63.769. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

* * * * *

(5) * * *

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system. Records identifying the schedule for replacement and records of each carbon replacement shall be maintained as required in § 63.774(b)(7)(ix). The schedule for replacement shall be submitted with the Notification of Compliance Status Report as specified in § 63.775(d)(5)(iv). Each carbon replacement must be reported in the Periodic Reports as specified in § 63.772(e)(2)(xii).

* * * * *

(e) * * *

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, or BTEX limit determined in § 63.765(b)(1)(iii), as applicable, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the emission reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent or, if applicable, the BTEX limit determined in § 63.765(b)(1)(iii) for the small glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including but not limited to changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall emission reduction due to process modifications.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.765(b)(1)(iii), as applicable, using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.765(b)(1)(iii), as applicable, using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

* * * * *

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) or (f) of this section, as applicable, except that the emission reduction or limit achieved shall be the emission reduction or limit specified for the control device(s) in paragraph (e)(2) of this section.

(f) *Control device requirements for small glycol dehydration units.* (1) The control device used to meet BTEX the emission limit calculated in § 63.765(b)(1)(iii) shall be one of the control devices specified in paragraphs (f)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (*e.g.,* thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated to reduce the mass content of BTEX in the gases vented to the device as

determined in accordance with the requirements of § 63.772(e). If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(ii) A vapor recovery device (*e.g.*, carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of BTEX in the gases vented to the device as determined in accordance with the requirements of § 63.772(e); or

(iii) A flare, as defined in § 63.761, that is designed and operated in accordance with the requirements of § 63.11(b).

(2) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of § 63.773(d), the owner or operator shall demonstrate compliance according to the requirements of either § 63.772(f) or (h).

(3) For each carbon adsorption system used as a control device to meet the requirements of paragraph (f)(1)(ii) of this section, the owner or operator shall manage the carbon as required under (d)(5)(i) and (ii) of this section.

18. Section 63.772 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(1)(ii);

c. Revising paragraph (b)(2);

d. Adding paragraph (d);

e. Revising paragraph (e) introductory text;

f. Revising paragraphs (e)(1)(i) through (v);

g. Revising paragraph (e)(2);

h. Revising paragraph (e)(3) introductory text;

i. Revising paragraph (e)(3)(i)(B);

j. Revising paragraph (e)(3)(iv)(C)(*1*);

k. Adding paragraphs (e)(3)(v) and (vi);

l. Revising paragraph (e)(4) introductory text;

m. Revising paragraph (e)(4)(i);

n. Revising paragraph (e)(5);

o. Revising paragraph (f) introductory text;

p. Adding paragraphs (f)(2) through (f)(6);

q. Revising paragraph (g) introductory text;

r. Revising paragraph (g)(1) and paragraph (g)(2) introductory text;

s. Revising paragraph (g)(2)(iii);

t. Revising paragraph (g)(3);

u. Adding paragraph (h); and

v. Adding paragraph (i) to read as follows:

§ 63.772 Test methods, compliance procedures, and compliance demonstrations.

* * * * *

(b) *Determination of glycol dehydration unit flowrate, benzene emissions, or BTEX emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate, benzene emissions, or BTEX emissions.

(1) * * *

(ii) The owner or operator shall document, to the Administrator's satisfaction, the actual annual average natural gas flowrate to the glycol dehydration unit.

(2) The determination of actual average benzene or BTEX emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (b)(2)(i) or (b)(2)(ii) of this section. Emissions shall be determined either uncontrolled, or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene or BTEX emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene or BTEX emissions in kilograms per hour through direct measurement using the methods in § 63.772(a)(1)(i) or (ii), or an alternative method according to § 63.7(f). Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

* * * * *

(d) *Test procedures and compliance demonstrations for small glycol dehydration units.* This paragraph applies to the test procedures for small dehydration units.

(1) If the owner or operator is using a control device to comply with the emission limit in § 63.765(b)(1)(iii), the requirements of paragraph (e) of this section apply. Compliance is demonstrated using the methods specified in paragraph (f) of this section.

(2) If no control device is used to comply with the emission limit in § 63.765(b)(1)(iii), the owner or operator must determine the glycol dehydration unit BTEX emissions as specified in paragraphs (d)(2)(i) through (iii) of this section. Compliance is demonstrated if the BTEX emissions determined as specified in paragraphs (d)(2)(i) through (iii) are less than the emission limit calculated using the equation in § 63.765(b)(1)(iii).

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the outlet of the glycol dehydration unit process vent. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) The BTEX emissions from the outlet of the glycol dehydration unit process vent shall be determined using the procedures specified in paragraph (e)(3)(v) of this section. As an alternative, the mass rate of BTEX at the outlet of the glycol dehydration unit process vent may be calculated using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and shall be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1). When the BTEX mass rate is calculated for glycol dehydration units using the model GRI–GLYCalc™, all BTEX measured by Method 18, 40 CFR part 60, appendix A, shall be summed.

(e) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1) using a performance test as specified in paragraph (e)(3) of this section. Owners or operators using a condenser have the option to use a design analysis as specified in paragraph (e)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (e)(5) of this section for performance testing of a condenser used

to control emissions from a glycol dehydration unit process vent. As an alternative to conducting a performance test under this section for combustion control devices, a control device that can be demonstrated to meet the performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1) through a performance test conducted by the manufacturer, as specified in paragraph (h) of this section can be used.

(1) * * *

(i) Except as specified in paragraph (e)(2) of this section, a flare, as defined in § 63.761, that is designed and operated in accordance with § 63.11(b);

(ii) Except for control devices used for small glycol dehydration units, a boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) Except for control devices used for small glycol dehydration units, a boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) Except for control devices used for small glycol dehydration units, a boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) Except for control devices used for small glycol dehydration units, a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

* * * * *

(2) An owner or operator shall design and operate each flare, as defined in § 63.761, in accordance with the requirements specified in § 63.11(b) and the compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1), the owner or operator shall use the test methods and procedures specified in paragraphs (e)(3)(i) through (v) of this section. The initial and periodic performance tests shall be conducted according to the schedule specified in paragraph (e)(3)(vi) of this section.

(i) * * *

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.765(b)(1)(iii), or the BTEX emission limit specified in § 63.771(f)(1) the sampling site shall be located at the outlet of the combustion device.

* * * * *

(iv) * * *

(C) * * *

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3A or 3B, 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration. The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

* * * * *

(v) To determine compliance with the BTEX emission limit specified in § 63.771(f)(1) the owner or operator shall use one of the following methods: Method 18, 40 CFR part 60, appendix A; ASTM D6420–99 (2004), as specified in § 63.772(a)(1)(ii); or any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A. The following procedures shall be used to calculate BTEX emissions:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of BTEX (E_o) shall be computed using the equations and procedures specified in paragraphs (e)(3)(v)(B)(*1*) and (*2*) of this section.

(*1*) The following equation shall be used:

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o$$

Where:

E_o= Mass rate of BTEX at the outlet of the control device, dry basis, kilogram per hour.

C_{oj}= Concentration of sample component j of the gas stream at the outlet of the control device, dry basis, parts per million by volume.

M_{oj}= Molecular weight of sample component j of the gas stream at the outlet of the control device, gram/gram-mole.

Q_o= Flowrate of gas stream at the outlet of the control device, dry standard cubic meter per minute.

K_2= Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 degrees C.

n = Number of components in sample.

(*2*) When the BTEX mass rate is calculated, only BTEX compounds measured by Method 18, 40 CFR part 60, appendix A, or ASTM D6420–99 (2004) as specified in § 63.772(a)(1)(ii), shall be summed using the equations in paragraph (e)(3)(v)(B)(*1*) of this section.

(vi) The owner or operator shall conduct performance tests according to the schedule specified in paragraphs (e)(3)(vi)(A) and (B) of this section.

(A) An initial performance test shall be conducted within 180 days after the compliance date that is specified for each affected source in § 63.760(f)(7) through (8), except that the initial performance test for existing combustion control devices at existing major sources shall be conducted no later than 3 years after the date of publication of the final rule in the **Federal Register**. If the owner or operator of an existing combustion control device at an existing major source chooses to replace such device with a control device whose model is tested under § 63.772(h), then the newly installed device shall comply with all provisions of this subpart no later than 3 years after the date of publication of the final rule in the **Federal Register**. The performance test results shall be submitted in the Notification of Compliance Status Report as required in § 63.775(d)(1)(ii).

(B) Periodic performance tests shall be conducted for all control devices required to conduct initial performance tests except as specified in paragraphs (e)(3)(vi)(B)(*1*) and (*2*) of this section. The first periodic performance test shall be conducted no later than 60 months after the initial performance test required in paragraph (e)(3)(vi)(A) of this section. Subsequent periodic performance tests shall be conducted at intervals no longer than 60 months following the previous periodic performance test or whenever a source desires to establish a new operating limit. The periodic performance test results must be submitted in the next Periodic Report as specified in § 63.775(e)(2)(xi). Combustion control devices meeting the criteria in either paragraph (e)(3)(vi)(B)(*1*) or (*2*) of this section are not required to conduct periodic performance tests.

(*1*) A control device whose model is tested under, and meets the criteria of, § 63.772(h), or

(*2*) A combustion control device tested under § 63.772(e) that meets the outlet TOC or HAP performance level specified in § 63.771(d)(1)(i)(B) and that

establishes a correlation between firebox or combustion chamber temperature and the TOC or HAP performance level.

(4) For a condenser design analysis conducted to meet the requirements of § 63.771(d)(1), (e)(3)(ii), or (f)(1), the owner or operator shall meet the requirements specified in paragraphs (e)(4)(i) and (e)(4)(ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.775(d)(1)(i).

(i) The condenser design analysis shall include an analysis of the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the condenser design analysis, an owner or operator may elect to use the procedures specified in paragraph (e)(5) of this section.

* * * * *

(5) As an alternative to the procedures in paragraph (e)(4)(i) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(f) *Compliance demonstration for control device performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.771(d)(1)(i), (e)(3) and (f)(1). Compliance shall be demonstrated using the requirements in paragraphs (f)(1) through (3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.771(d)(1)(ii), (e)(3) or (f)(1) may demonstrate compliance according to paragraph (g) of this section. An owner or operator may switch between compliance with paragraph (f) of this section and compliance with paragraph (g) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.775(e), following the change.

* * * * *

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.773(d)(4) except that the inlet gas flow rate to the control device shall not be averaged.

(3) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (f)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (f)(1) of this section. For inlet gas flow rate, compliance with the operating parameter limit is achieved when the value is equal to or less than the value established under § 63.772(h).

(4) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), the CMS required in § 63.773(d) must be operated at all times the affected source is operating. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. Monitoring system repairs are required to be completed in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(5) Data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities may not be used in calculations used to report emissions or operating levels. All the data collected during all other required data collection periods must be used in assessing the operation of the control device and associated control system.

(6) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

(g) *Compliance demonstration with percent reduction or emission limit performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.771(d)(1)(ii),(e)(3) or (f)(1) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (g)(1) through (3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to § 63.773(d)(5)(ii). For sources required to meet the BTEX limit in accordance with § 63.771(e) or (f)(1) the owner or operator shall identify the minimum percent reduction necessary to meet the BTEX limit.

(2) Compliance with the requirements in § 63.771(d)(1)(ii),(e)(3) or (f)(1) shall be demonstrated by the procedures in paragraphs (g)(2)(i) through (iii) of this section.

* * * * *

(iii) Except as provided in paragraphs (g)(2)(iii)(A) and (B) of this section, at the end of each operating day, the owner or operator shall calculate the 365-day average HAP, or BTEX, emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (g)(2)(ii) of this section for the preceding 365 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.771(e), the 365-day average HAP, or BTEX, emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency as determined in paragraph (g)(2)(ii) of this section, both for the previous 365 operating days.

(A) After the compliance dates specified in § 63.760(f), an owner or operator with less than 120 days of data for determining average HAP, or BTEX, emission reduction, as appropriate, shall calculate the average HAP, or BTEX emission reduction, as appropriate, for the first 120 days of operation after the compliance dates. For sources required to meet the overall 95.0 percent reduction requirement, compliance is achieved if the 120-day average HAP emission reduction is equal to or greater than 90.0 percent. For sources required to meet the BTEX limit under § 63.765(b)(1)(iii), compliance is achieved if the average BTEX emission reduction is at least 95.0 percent of the required 365-day value identified under paragraph (g)(1) of this section (*i.e.*, at least 76.0 percent if the 365-day design value is 80.0 percent).

(B) After 120 days and no more than 364 days of operation after the

compliance dates specified in § 63.760(f), the owner or operator shall calculate the average HAP emission reduction as the HAP emission reduction averaged over the number of days between the current day and the applicable compliance date. For sources required to meet the overall 95.0-percent reduction requirement, compliance with the performance requirements is achieved if the average HAP emission reduction is equal to or greater than 90.0 percent. For sources required to meet the BTEX limit under § 63.765(b)(1)(iii), compliance is achieved if the average BTEX emission reduction is at least 95.0 percent of the required 365-day value identified under paragraph (g)(1) of this section (*i.e.*, at least 76.0 percent if the 365-day design value is 80.0 percent).

(3) If the owner or operator has data for 365 days or more of operation, compliance is achieved based on the applicable criteria in paragraphs (g)(3)(i) or (ii) of this section.

(i) For sources meeting the HAP emission reduction specified in § 63.771(d)(1)(ii) or (e)(3) the average HAP emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than 95.0 percent.

(ii) For sources required to meet the BTEX limit under § 63.771(e)(3) or (f)(1), compliance is achieved if the average BTEX emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than the minimum percent reduction identified in paragraph (g)(1) of this section.

* * * * *

(h) *Performance testing for combustion control devices—manufacturers' performance test.* (1) This paragraph applies to the performance testing of a combustion control device conducted by the device manufacturer. The manufacturer shall demonstrate that a specific model of control device achieves the performance requirements in (h)(7) of this section by conducting a performance test as specified in paragraphs (h)(2) through (6) of this section.

(2) Performance testing shall consist of three one-hour (or longer) test runs for each of the four following firing rate settings making a total of 12 test runs per test. Propene (propylene) gas shall be used for the testing fuel. All fuel analyses shall be performed by an independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier).

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. Within the first 5 minutes, ramp the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. Within the first 5 minutes, ramp the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at 0 percent of the maximum design rate. Within the first 5 minutes, ramp the firing rate to 100 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 0 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(3) All models employing multiple enclosures shall be tested simultaneously and with all burners operational. Results shall be reported for the each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data shall be collected continuously throughout the performance test using an electronic Data Acquisition System and strip chart. Data shall be submitted with the test report in accordance with paragraph (8)(iii) of this section.

(4) Inlet testing shall be conducted as specified in paragraphs (h)(4)(i) through (iii) of this section.

(i) The fuel flow metering system shall be located in accordance with Method 2A, 40 CFR part 60, appendix A–1, (or other approved procedure) to measure fuel flow rate at the control device inlet location. The fitting for filling fuel sample containers shall be located a minimum of 8 pipe diameters upstream of any inlet fuel flow monitoring meter.

(ii) Inlet flow rate shall be determined using Method 2A, 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the gas pressure and temperature at 5-minute intervals throughout each 60-minute THC test.

(iii) Inlet fuel sampling shall be conducted in accordance with the criteria in paragraphs (h)(4)(iii)(A) and (B) of this section.

(A) At the inlet fuel sampling location, securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 1 hour period. Filling shall be conducted as specified in the following:

(*1*) Open the canister sampling valve at the beginning of the total hydrocarbon (THC) test, and close the canister at the end of the THC test.

(*2*) Fill one canister for each THC test run.

(*3*) Label the canisters individually and record on a chain of custody form.

(B) Each fuel sample shall be analyzed using the following methods. The results shall be included in the test report.

(*1*) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03.

(*2*) Hydrogen (H_2), carbon monoxide (CO), carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2) using ASTM D1945–03.

(*3*) Carbonyl sulfide, carbon disulfide plus mercaptans using ASTM D5504.

(*4*) Higher heating value using ASTM D3588–98 or ASTM D4891–89.

(5) Outlet testing shall be conducted in accordance with the criteria in paragraphs (h)(5)(i) through (v) of this section.

(i) Sampling and flowrate measured in accordance with the following:

(A) The outlet sampling location shall be a minimum of 4 equivalent stack diameters downstream from the highest peak flame or any other flow disturbance, and a minimum of one equivalent stack diameter upstream of the exit or any other flow disturbance. A minimum of two sample ports shall be used.

(B) Flow rate shall be measured using Method 1, 40 CFR part 60, Appendix 1, for determining flow measurement traverse point location; and Method 2, 40 CFR part 60, Appendix 1, shall be used to measure duct velocity. If low flow conditions are encountered (*i.e.*, velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer shall be used to obtain an accurate flow profile.

(ii) Molecular weight shall be determined as specified in paragraphs (h)(4)(iii)(B), (h)(5)(ii)(A), and (h)(5)(ii)(B) of this section.

(A) An integrated bag sample shall be collected during the Method 4, 40 CFR part 60, Appendix A, moisture test. Analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the following criteria:

(*1*) Collect the integrated sample throughout the entire test, and collect

representative volumes from each traverse location.

(*2*) The sampling line shall be purged with stack gas before opening the valve and beginning to fill the bag.

(*3*) The bag contents shall be kneaded or otherwise vigorously mixed prior to the GC analysis.

(*4*) The GC–TCD calibration procedure in Method 3C, 40 CFR part 60, Appendix A, shall be modified by using EPAAlt–045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, the initial calibration using at least three concentration levels shall be repeated.

(B) Report the molecular weight of: O_2, CO_2, methane (CH4), and N_2 and include in the test report submitted under § 63.775(d)(iii). Moisture shall be determined using Method 4, 40 CFR part 60, Appendix A. Traverse both ports with the Method 4, 40 CFR part 60, Appendix A, sampling train during each test run. Ambient air shall not be introduced into the Method 3C, 40 CFR part 60, Appendix A, integrated bag sample during the port change.

(iii) Carbon monoxide shall be determined using Method 10, 40 CFR part 60, Appendix A. The test shall be run at the same time and with the sample points used for the EPA Method 25A, 40 CFR part 60, Appendix A, testing. An instrument range of 0–10 per million by volume-dry (ppmvd) shall be used.

(iv) Visible emissions shall be determined using Method 22, 40 CFR part 60, Appendix A. The test shall be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the position of the observer and annotated with date and time, will be taken once per test run and the four photos included in the test report.

(6) Total hydrocarbons (THC) shall be determined as specified by the following criteria:

(i) Conduct THC sampling using Method 25A, 40 CFR part 60, Appendix A, except the option for locating the probe in the center 10 percent of the stack shall not be allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during the testing.

(ii) A valid test shall consist of three Method 25A, 40 CFR part 60, Appendix A, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases will be propane in air and be certified through EPA Protocol 1—"EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, as amended August 25, 1999, EPA–600/R–97/121 (or more recent if updated since 1999).

(v) THC measurements shall be reported in terms of ppmvw as propane.

(vi) THC results shall be corrected to 3 percent CO_2, as measured by Method 3C, 40 CFR part 60, Appendix A.

(vii) Subtraction of methane/ethane from the THC data is not allowed in determining results.

(7) Performance test criteria:

(i) The control device model tested must meet the criteria in paragraphs (h)(7)(i)(A) through (C) of this section:

(A) Method 22, 40 CFR part 60, Appendix A, results under paragraph (h)(5)(v) of this section with no indication of visible emissions, and

(B) Average Method 25A, 40 CFR part 60, Appendix A, results under paragraph (h)(6) of this section equal to or less than 10.0 ppmvw THC as propane corrected to 3.0 percent CO_2, and

(C) Average CO emissions determined under paragraph (h)(5)(iv) of this section equal to or less than 10 parts ppmvd, corrected to 3.0 percent CO_2.

(ii) The manufacturer shall determine a maximum inlet gas flow rate which shall not be exceeded for each control device model to achieve the criteria in paragraph (h)(7)(i) of this section.

(iii) A control device meeting the criteria in paragraphs (h)(7)(i)(A) through (C) of this section will have demonstrated a destruction efficiency of 98.0 percent for HAP regulated under this subpart.

(8) The owner or operator of a combustion control device model tested under this section shall submit the information listed in paragraphs (h)(8)(i) through (iii) of this section in the test report required under § 63.775(d)(1)(iii).

(i) Full schematic of the control device and dimensions of the device components.

(ii) Design net heating value (minimum and maximum) of the device.

(iii) Test fuel gas flow range (in both mass and volume). Include the minimum and maximum allowable inlet gas flow rate.

(iv) Air/stream injection/assist ranges, if used.

(v) The test parameter ranges listed in paragraphs (h)(8)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold pressure.

(I) Pilot flame sensor.

(J) Pilot flame design fuel and fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flow rate.

(O) Wind velocity and direction.

(vi) The test report shall include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, and strip charts annotated with test times and calibration values.

(i) *Compliance demonstration for combustion control devices—manufacturers' performance test.* This paragraph applies to the demonstration of compliance for a combustion control device tested under the provisions in paragraph (h) of this section. Owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1), by installing a device tested under paragraph (h) of this section and complying with the following criteria:

(1) The inlet gas flow rate shall meet the range specified by the manufacturer. Flow rate shall be measured as specified in § 63.773(d)(3)(i)(H)(*1*).

(2) A pilot flame shall be present at all times of operation. The pilot flame shall be monitored in accordance with § 63.773(d)(3)(i)(H)(*2*).

(3) Devices shall be operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. A visible emissions test using Method 22, 40 CFR part 60, Appendix A, shall be performed monthly. The observation period shall be 2 hours and shall be used according to Method 22.

(4) Compliance with the operating parameter limit is achieved when the following criteria are met:

(i) The inlet gas flow rate monitored under paragraph (i)(1) of this section is equal to or below the maximum established by the manufacturer; and

(ii) The pilot flame is present at all times; and

(iii) During the visible emissions test performed under paragraph (i)(3) of this

section the duration of visible emissions does not exceed a total of 5 minutes during the observation period. Devices failing the visible emissions test shall follow the requirements in paragraphs (i)(4)(iii)(A) and (B) of this section.

(A) Following the first failure, the fuel nozzle(s) and burner tubes shall be replaced.

(B) If, following replacement of the fuel nozzle(s) and burner tubes as specified in paragraph (i)(4)(iii)(A), the visible emissions test is not passed in the next scheduled test, either a performance test shall be performed under paragraph (e) of this section, or the device shall be replaced with another control device whose model was tested, and meets, the requirements in paragraph (h) of this section.

19. Section 63.773 is amended by:

a. Adding paragraph (b);

b. Revising paragraph (d)(1) introductory text;

c. Revising paragraph (d)(1)(ii) and adding paragraphs (d)(1)(iii) and (iv);

d. Revising paragraphs (d)(2)(i) and (d)(2)(ii);

e. Revising paragraphs (d)(3)(i)(A) and (B);

f. Revising paragraphs (d)(3)(i)(D) and (E);

g. Revising paragraphs (d)(3)(i)(F)(*1*) and (*2*);

h. Revising paragraph (d)(3)(i)(G);

i. Adding paragraph (d)(3)(i)(H);

j. Revising paragraph (d)(4);

k. Revising paragraph (d)(5)(i);

l. Revising paragraphs (d)(5)(ii)(A) through (C);

m. Revising paragraphs (d)(6)(ii) and (iii);

n. Adding paragraph (d)(6)(vi);

o. Revising paragraph (d)(8)(i)(A); and

p. Revising paragraph (d)(8)(ii) to read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(b) The owner or operator of a control device whose model was tested under § 63.772(h) shall develop an inspection and maintenance plan for each control device. At a minimum, the plan shall contain the control device manufacturer's recommendations for ensuring proper operation of the device. Semi-annual inspections shall be conducted for each control device with maintenance and replacement of control device components made in accordance with the plan.

* * * * *

(d) *Control device monitoring requirements.* (1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section. Owners or operators that install and operate a flare in accordance with § 63.771(d)(1)(iii) or (f)(1)(iii) are exempt from the requirements of paragraphs (d)(4) and (5) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.771(d), (e)(3) or (f)(1). Each continuous parameter monitoring system shall meet the following specifications and requirements:

* * * * *

(ii) A site-specific monitoring plan must be prepared that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraph (d) of this section and in § 63.8(d). Each CPMS must be installed, calibrated, operated, and maintained in accordance with the procedures in your approved site-specific monitoring plan. Using the process described in § 63.8(f)(4), you may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (d)(1)(ii)(A) through (E) of this section in your site-specific monitoring plan.

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations;

(B) Sampling interface (*e.g.*, thermocouple) location such that the monitoring system will provide representative measurements;

(C) Equipment performance checks, system accuracy audits, or other audit procedures;

(D) Ongoing operation and maintenance procedures in accordance with provisions in § 63.8(c)(1) and (c)(3); and

(E) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 63.10(c), (e)(1), and (e)(2)(i).

(iii) The owner or operator must conduct the CPMS equipment performance checks, system accuracy audits, or other audit procedures specified in the site-specific monitoring plan at least once every 12 months.

(iv) The owner or operator must conduct a performance evaluation of each CPMS in accordance with the site-specific monitoring plan.

(2) * * *

(i) Except for control devices for small glycol dehydration units, a boiler or process heater in which all vent streams are introduced with the primary fuel or is used as the primary fuel; or

(ii) Except for control devices for small glycol dehydration units, a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) * * *

(i) * * *

(A) For a thermal vapor incinerator that demonstrates during the performance test conducted under § 63.772(e) that the combustion zone temperature is an accurate indicator of performance, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

* * * * *

(D) For a boiler or process heater a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.8 degrees C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) * * *

(*1*) A continuous parameter monitoring system to measure and

record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The flow sensor must have a measurement sensitivity of 5 percent of the flow rate or 10 cubic feet per minute, whichever is greater. The mechanical connections for leakage must be checked at least every month, and a visual inspection must be performed at least every 3 months of all components of the flow CPMS for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your flow CPMS is not equipped with a redundant flow sensor; and

(*2*) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater.

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.772(e)(3) shall be based on the total carbon working capacity of the control device and source operating schedule.

(H) For a control device model whose model is tested under § 63.772(h):

(*1*) A continuous monitoring system that measures gas flow rate at the inlet to the control device. The monitoring instrument shall have an accuracy of plus or minus 2 percent or better.

(*2*) A heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

* * * * *

(4) Using the data recorded by the monitoring system, except for inlet gas flow rate, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) * * *

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.772(e)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii) or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by a condenser design analysis or control device manufacturer recommendations or a combination of both.

(B) If the owner or operator uses a condenser design analysis in accordance with the requirements of § 63.772(e)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii) or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the condenser design analysis and may be supplemented by the condenser manufacturer's recommendations.

(C) If the owner or operator operates a control device where the performance test requirement was met under § 63.772(h) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii) or (f)(1), then the maximum inlet gas flow rate shall be established based on the performance test and supplemented, as necessary, by the manufacturer recommendations.

(ii) * * *

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.772(e)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.771(d)(1), (e)(3)(ii) or (f)(1), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.772(e)(4)(i) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii) or (f)(1), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraph (d)(5)(ii)(B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

* * * * *

(6) * * *

(ii) For sources meeting § 63.771(d)(1)(ii), an excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than 95.0 percent. For sources meeting § 63.771(f)(1), an excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than 95.0 percent of the identified 365-day required percent reduction.

(iii) For sources meeting § 63.771(d)(1)(ii), if an owner or operator has less than 365 days of data, an excursion occurs when the average condenser efficiency calculated according to the procedures specified in § 63.772(g)(2)(iii)(A) or (B) is less than 90.0 percent. For sources meeting § 63.771(d)(1)(ii), an excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than the identified 365-day required percent reduction.

* * * * *

(vi) For control device whose model is tested under § 63.772(h) an excursion occurs when:

(A) The inlet gas flow rate exceeds the maximum established during the test conducted under § 63.772(h).

(B) Failure of the monthly visible emissions test conducted under § 63.772(i)(3) occurs.

* * * * *

(8) * * *

(i) * * *

(A) During a malfunction when the affected facility is operated during such

period in accordance with § 63.6(e)(1); or

* * * * *

(ii) For each control device, or combinations of control devices installed on the same emissions unit, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first Periodic Report submitted by the owner or operator in accordance with § 63.775(e) of this subpart.

* * * * *

20. Section 63.774 is amended by:

a. Revising paragraph (b)(3) introductory text;

b. Removing and reserving paragraph (b)(3)(ii);

c. Revising paragraph (b)(4)(ii) introductory text;

d. Adding paragraph (b)(4)(ii)(C);

e. Adding paragraph (b)(7)(ix); and

f. Adding paragraphs (g) through (i) to read as follows:

§ 63.774 Recordkeeping requirements.

* * * * *

(b) * * *

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.773(d). Notwithstanding the requirements of § 63.10(c), monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating or failed to collect required data.

* * * * *

(ii) [Reserved]

* * * * *

(4) * * *

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.773(d)(4) of this subpart, except as specified in paragraphs (b)(4)(ii)(A) through (C) of this section.

* * * * *

(C) For control device whose model is tested under § 63.772(h), the records required in paragraph (h) of this section.

* * * * *

(7) * * *

(ix) Records identifying the carbon replacement schedule under § 63.771(d)(5) and records of each carbon replacement.

* * * * *

(g) The owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.*, process equipment) or the air pollution control equipment and monitoring equipment. The owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.764(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(h) Record the following when using a control device whose model is tested under § 63.772(h) to comply with § 63.771(d), (e)(3)(ii) and (f)(1):

(1) All visible emission readings and flowrate measurements made during the compliance determination required by § 63.772(i); and

(2) All hourly records and other recorded periods when the pilot flame is absent.

(i) The date the semi-annual maintenance inspection required under § 63.773(b) is performed. Include a list of any modifications or repairs made to the control device during the inspection and other maintenance performed such as cleaning of the fuel nozzles.

21. Section 63.775 is amended by:

a. Revising paragraph (b)(1);

b. Revising paragraph (b)(6);

c. Removing and reserving paragraph (b)(7);

d. Revising paragraph (c)(1);

e. Revising paragraph (c)(6);

f. Revising paragraph (c)(7)(i);

g. Revising paragraph (d)(1)(i);

h. Revising paragraph (d)(1)(ii) introductory text;

i. Revising paragraph (d)(5)(ii);

j. Adding paragraph (d)(5)(iv);

k. Revising paragraph (d)(11);

l. Adding paragraphs (d)(13) and (d)(14);

m. Revising paragraphs (e)(2) introductory text, (e)(2)(ii)(B) and (C);

n. Adding paragraphs (e)(2)(ii)(E) and (F);

o. Adding paragraphs (e)(2)(xi) through (xiii); and

p. Adding paragraph (g) to read as follows:

§ 63.775 Reporting requirements.

* * * * *

(b) * * *

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted as provided in paragraphs (b)(1)(i) and (ii) of this section.

(i) Except as otherwise provided in paragraph (ii), the initial notifications shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(ii) An affected source identified under § 63.760(f)(7) or (9) shall submit an initial notification required for existing affected sources under § 63.9(b)(2) within 1 year after the affected source becomes subject to the provisions of this subpart or by one year after publication of the final rule in the **Federal Register**, whichever is later. An affected source identified under § 63.760(f)(7) or (9) that plans to be an area source by three years after publication of the final rule in the **Federal Register**, shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

* * * * *

(6) If there was a malfunction during the reporting period, the Periodic Report specified in paragraph (e) of this section shall include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.764(j), including actions taken to correct a malfunction.

(7) [Reserved]

* * * * *

(c) * * *

(1) The initial notifications required under § 63.9(b)(2) not later than January 3, 2008. In addition to submitting your initial notification to the addressees specified under § 63.9(a), you must also submit a copy of the initial notification to the EPA's Office of Air Quality Planning and Standards. Send your notification via e-mail to *Oil and Gas Sector@epa.gov* or via U.S. mail or other mail delivery service to U.S. EPA, Sector Policies and Programs Division/ Fuels and Incineration Group (E143–01), Attn: Oil and Gas Project Leader, Research Triangle Park, NC 27711.

* * * * *

(6) If there was a malfunction during the reporting period, the Periodic Report specified in paragraph (e) of this section shall include the number, duration, and

a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.764(j), including actions taken to correct a malfunction.

(7) * * *

(i) Documentation of the source's location relative to the nearest UA plus offset and UC boundaries. This information shall include the latitude and longitude of the affected source; whether the source is located in an urban cluster with 10,000 people or more; the distance in miles to the nearest urbanized area boundary if the source is not located in an urban cluster with 10,000 people or more; and the name of the nearest urban cluster with 10,000 people or more and nearest urbanized area.

* * * * *

(d) * * *

(1) * * *

(i) The condenser design analysis documentation specified in § 63.772(e)(4) of this subpart, if the owner or operator elects to prepare a design analysis.

(ii) If the owner or operator is required to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.772(e)(3) and that the test conditions are representative of current operating conditions. If the owner or operator operates a combustion control device model tested under § 63.772(h), an electronic copy of the performance test results shall be submitted via e-mail to *Oil and Gas PT@EPA.GOV*.

* * * * *

(5) * * *

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.773(d)(5). This explanation shall include any data and calculations used to develop the value and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1).

* * * * *

(iv) For each carbon adsorber, the predetermined carbon replacement schedule as required in § 63.771(d)(5)(i).

* * * * *

(11) The owner or operator shall submit the analysis prepared under § 63.771(e)(2) to demonstrate the conditions by which the facility will be operated to achieve the HAP emission reduction of 95.0 percent, or the BTEX limit in § 63.765(b)(1)(iii), through process modifications or a combination of process modifications and one or more control devices.

* * * * *

(13) If the owner or operator installs a combustion control device model tested under the procedures in § 63.772(h), the data listed under § 63.772(h)(8).

(14) For each combustion control device model tested under § 63.772(h), the information listed in paragraphs (d)(14)(i) through (vi) of this section.

(i) Name, address and telephone number of the control device manufacturer.

(ii) Control device model number.

(iii) Control device serial number.

(iv) Date of control device certification test.

(v) Manufacturer's HAP destruction efficiency rating.

(vi) Control device operating parameters, maximum allowable inlet gas flowrate.

(e) * * *

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (xiii) of this section, as applicable.

* * * * *

(ii) * * *

(B) For each excursion caused when the 365-day average condenser control efficiency is less than the value specified in § 63.773(d)(6)(ii), the report must include the 365-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(C) For each excursion caused when condenser control efficiency is less than the value specified in § 63.773(d)(6)(iii), the report must include the average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

* * * * *

(E) For each excursion caused when the maximum inlet gas flow rate identified under § 63.772(h) is exceeded, the report must include the values of the inlet gas identified and the date and duration of the period that the excursion occurred.

(F) For each excursion caused when visible emissions determined under § 63.772(i) exceed the maximum allowable duration, the report must include the date and duration of the period that the excursion occurred.

* * * * *

(xi) The results of any periodic test as required in § 63.772(e)(3) conducted during the reporting period.

(xii) For each carbon adsorber used to meet the control device requirements of § 63.771(d)(1), records of each carbon replacement that occurred during the reporting period.

(xiii) For combustion control device inspections conducted in accordance with § 63.773(b) the records specified in § 63.774(i).

* * * * *

(g) *Electronic reporting.* (1) As of January 1, 2012 and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*). Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into the EPA's WebFIRE database.

(2) All reports required by this subpart not subject to the requirements in paragraphs (g)(1) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (g)(1) of this section in paper format.

22. Appendix to subpart HH of part 63 is amended by revising Table 2 to read as follows:

Appendix to Subpart HH of Part 63—Tables

* * * * *

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)	Yes.	
§ 63.1(a)(7) through (a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)	Yes.	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	No	Section reserved.
§ 63.1(b)(3)	Yes.	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	Yes	Subpart HH exempts area sources from the requirement to obtain a Title V permit unless otherwise required by law as specified in § 63.760(h).
§ 63.1(c)(3) and (c)(4)	No	Section reserved.
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a) through (c)	Yes.	
§ 63.4(a)(1) through (a)(2)	Yes.	
§ 63.4(a)(3) through (a)(5)	No	Section reserved.
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	No	Section reserved.
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2)	Yes.	
§ 63.6(c)(3) through (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes.	
§ 63.6(e)(1)(i)	No	See § 63.764(j) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	No	Section reserved.
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart HH does not contain opacity or visible emission standards.
§ 63.6(i)(1) through (i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	No.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	No.	
§ 63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	Yes.	
§ 63.8(c)(1)(iii)	Pending.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	Yes.	
§ 63.8(c)(4)(i)	No	Subpart HH does not require continuous opacity monitors.
§ 63.8(c)(4)(ii)	Yes.	
§ 63.8(c)(5) through (c)(8)	Yes.	
§ 63.8(d)	Yes.	
§ 63.8(d)(3)	Yes	Except for last sentence, which refers to an SSM plan. SSM plans are not required.
§ 63.8(e)	Yes	Subpart HH does not specifically require continuous emissions monitor performance evaluation, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes.	
§ 63.8(f)(6)	Yes.	
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification. Major and area sources that meet § 63.764(e) do not have to submit initial notifications.
§ 63.9(b)(3)	No	Section reserved.
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	No	Subpart HH does not have opacity or visible emission standards.
§ 63.9(g)(1)	Yes.	
§ 63.9(g)(2)	No	Subpart HH does not have opacity or visible emission standards.
§ 63.9(g)(3)	Yes.	
§ 63.9(h)(1) through (h)(3)	Yes	Area sources located outside UA plus offset and UC boundaries are not required to submit notifications of compliance status.
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) through (h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes	§ 63.774(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data.
§ 63.10(b)(2)	Yes.	
§ 63.10(b)(2)(i)	No	
§ 63.10(b)(2)(ii)	No	See § 63.774(g) for recordkeeping of occurrence, duration, and actions taken during malfunctions.
§ 63.10(b)(2)(iii)	Yes.	
§ 63.10(b)(2)(iv) through (b)(2)(v)	No.	
§ 63.10(b)(2)(vi) through (b)(2)(xiv)	Yes.	

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.10(b)(3)	Yes	§ 63.774(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data.
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (8)(c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (11)	No	See § 63.774(g) for recordkeeping of malfunctions.
§ 63.10(c)(12) through (14)	Yes.	
§ 63.10(c)(15)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes	Area sources located outside UA plus offset and UC boundaries do not have to submit performance test reports.
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No	See § 63.775(b)(6) or (c)(6) for reporting of malfunctions.
§ 63.10(e)(1)	Yes	Area sources located outside UA plus offset and UC boundaries are not required to submit reports.
§ 63.10(e)(2)	Yes	Area sources located outside UA plus offset and UC boundaries are not required to submit reports.
§ 63.10(e)(3)(i)	Yes	Subpart HH requires major sources to submit Periodic Reports semi-annually. Area sources are required to submit Periodic Reports annually. Area sources located outside UA plus offset and UC boundaries are not required to submit reports.
§ 63.10(e)(3)(i)(A)	Yes.	
§ 63.10(e)(3)(i)(B)	Yes.	
§ 63.10(e)(3)(i)(C)	No	Section reserved.
§ 63.10(e)(3)(ii) through (viii)	Yes.	
§ 63.10(f)	Yes.	
§ 63.11(a) and (b)	Yes.	
§ 63.11(c), (d), and (e)	Yes.	
§ 63.12(a) through (c)	Yes.	
§ 63.13(a) through (c)	Yes.	
§ 63.14(a) and (b)	Yes.	
§ 63.15(a) and (b)	Yes.	
§ 63.16	Yes.	

Subpart HHH—[Amended]

23. Section 63.1270 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(4);

c. Revising paragraphs (d)(1) and (d)(2); and

d. Adding paragraphs (d)(3), (4) and (5) to read as follows:

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company), and that are major sources of hazardous air pollutants (HAP) emissions as defined in § 63.1271. Emissions for major source determination purposes can be estimated using the maximum natural gas throughput calculated in either paragraph (a)(1) or (2) of this section and paragraphs (a)(3) and (4) of this section. As an alternative to calculating the maximum natural gas throughput, the owner or operator of a new or existing source may use the facility design maximum natural gas throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction in accordance with § 63.10(b)(3). A compressor station that transports natural gas prior to the point of custody transfer or to a natural gas processing plant (if present) is not considered a part of the natural gas transmission and storage source category. A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels (without obtaining and complying with other limitations that keep its potential to emit HAP below major source levels), and becomes a major source, must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (d) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

* * * * *

(4) The owner or operator shall determine the maximum values for other parameters used to calculate potential emissions as the maximum over the same period for which maximum throughput is determined as specified in paragraph (a)(1) or (a)(2) of this section. These parameters shall be based on an annual average or the highest single measured value. For estimating maximum potential emissions from glycol dehydration units, the glycol circulation rate used in the calculation shall be the unit's maximum rate under its physical and operational design consistent with the definition of potential to emit in § 63.2.

* * * * *

(d) * * *

(1) Except as specified in paragraphs (d)(3) through (5) of this section, the owner or operator of an affected source, the construction or reconstruction of which commenced before February 6,

1998, shall achieve compliance with the provisions of this subpart no later than June 17, 2002 except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) Except as specified in paragraphs (d)(3) through (5) of this section, the owner or operator of an affected source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(3) Each affected small glycol dehydration unit, as defined in § 63.1271, located at a major source, that commenced construction before August 23, 2011 must achieve compliance no later than 3 years after the date of publication of the final rule in the **Federal Register**, except as provided in § 63.6(i).

(4) Each affected small glycol dehydration unit, as defined in § 63.1271, located at a major source, that commenced construction on or after August 23, 2011 must achieve compliance immediately upon initial startup or the date of publication of the final rule in the **Federal Register**, whichever is later.

(5) Each large glycol dehydration unit, as defined in § 63.1271, that has complied with the provisions of this subpart prior to August 23, 2011 by reducing its benzene emissions to less than 0.9 megagrams per year must achieve compliance no later than 90 days after the date of publication of the final rule in the **Federal Register**, except as provided in § 63.6(i).

* * * * *

24. Section 63.1271 is amended by:

a. Adding, in alphabetical order, new definitions for the terms "affirmative defense," "BTEX," "flare," "large glycol dehydration units," "small glycol dehydration units"; and

b. Revising the definitions for "glycol dehydration unit baseline operations" and "temperature monitoring device" to read as follows:

§ 63.1271 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

BTEX means benzene, toluene, ethyl benzene and xylene.

* * * * *

Flare means a thermal oxidation system using an open flame (*i.e.*, without enclosure).

* * * * *

Glycol dehydration unit baseline operations means operations representative of the large glycol dehydration unit operations as of June 17, 1999 and the small glycol dehydration unit operations as of August 23, 2011. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, glycol dehydration unit baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (*i.e.*, at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

* * * * *

Large glycol dehydration unit means a glycol dehydration unit with an actual annual average natural gas flowrate equal to or greater than 283.0 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90 Mg/yr, determined according to § 63.1282(a).

* * * * *

Small glycol dehydration unit means a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 283.0 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr, determined according to § 63.1282(a).

Temperature monitoring device means an instrument used to monitor temperature and having a minimum accuracy of ± 1 percent of the temperature being monitored expressed in °C, or ± 2.5 °C, whichever is greater. The temperature monitoring device may measure temperature in degrees Fahrenheit or degrees Celsius, or both.

* * * * *

25. Section 63.1272 is revised to read as follows:

§ 63.1272 Startups and shutdowns.

(a) The provisions set forth in this subpart shall apply at all times.

(b) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup or shutdown of the affected source or a portion thereof.

(c) During startups and shutdowns, the owner or operator shall implement measures to prevent or minimize excess emissions to the maximum extent practical.

(d) In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owner or operator must timely meet the notification requirements in paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized

to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (d)(1) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

26. Section 63.1274 is amended by:

a. Revising paragraph (c) introductory text;

b. Removing and reserving paragraph (d);

c. Revising paragraph (g); and

d. Adding paragraph (h) to read as follows:

§ 63.1274 General standards.

* * * * *

(c) The owner or operator of an affected source (*i.e.*, glycol dehydration unit) located at an existing or new major source of HAP emissions shall comply with the requirements in this subpart as follows:

* * * * *

(d) [Reserved]

* * * * *

(g) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, and a leak is detected, the owner or operator shall take further action as required by the applicable provisions of this subpart.

(h) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

27. Section 63.1275 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(1);

c. Revising paragraph (c)(2); and

d. Revising paragraph (c)(3) to read as follows:

§ 63.1275 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart that must be controlled for air emissions as specified in paragraph (c)(1) of § 63.1274.

(b) * * *

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i) or (b)(1)(iii) of this section.

(i) The owner or operator of a large glycol dehydration unit, as defined in § 63.1271, shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d).

(ii) [Reserved]

(iii) You must limit BTEX emissions from each small glycol dehydration unit, as defined in § 63.1271, to the limit determined in Equation 1 of this section. The limit must be met in accordance with one of the alternatives specified in paragraphs (b)(i)(iii)(A) through (D) of this section.

$$EL_{BTEX} = 6.42x10^{-5} \bullet Throughput \bullet C_{i,BTEX} \bullet 365 \frac{days}{yr} \bullet \frac{1\ Mg}{1x10^{6}\ grams} \qquad \text{Equation 1}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

6.42×10^{-5} = BTEX emission limit, grams BTEX/standard cubic meter -ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day

$C_{i,BTEX}$ = BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

(A) Connect the process vent to a control device or combination of control devices through a closed-vent system. The closed vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(f).

(B) Meet the emissions limit through process modifications in accordance with the requirements specified in § 63.1281(e).

(C) Meet the emission limit for each small glycol dehydration unit using a combination of process modifications and one or more control devices through the requirements specified in paragraphs (b)(1)(iii)(A) and (B) of this section.

(D) Demonstrate that the emissions limit is met through actual uncontrolled operation of the small glycol dehydration unit. Document operational parameters in accordance with the requirements specified in § 63.1281(e) and emissions in accordance with the requirements specified in § 63.1282(a)(3).

* * * * *

(c) * * *

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the large glycol dehydration unit process vent are reduced by 95.0 percent through process modifications or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.1281(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraph (c)(3)(i) or (iii) through the installation and operation of controls as specified in paragraph (b)(1) of this section.

(i) For any large glycol dehydration unit, HAP emissions are reduced by 95.0 percent or more.

(ii) [Reserved]

(iii) For each small glycol dehydration unit, BTEX emissions are reduced to a level less than the limit calculated in paragraph (b)(1)(iii) of this section.

28. Section 63.1281 is amended by:

a. Revising paragraph (c)(1);

b. Revising the heading of paragraph (d).

c. Adding paragraph (d) introductory text;

d. Revising paragraph (d)(1)(i) introductory text;

e. Revising paragraph (d)(1)(i)(C);

f. Revising paragraphs (d)(1)(ii) and (iii);

g. Revising paragraph (d)(4)(i);

h. Revising paragraph (d)(5)(i);

i. Revising paragraph (e)(2);

j. Revising paragraph (e)(3) introductory text;

k. Revising paragraph (e)(3)(ii); and

l. Adding paragraph (f) to read as follows:

§ 63.1281 Control equipment requirements.

* * * * *

(c) * * *

(1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in an emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

* * * * *

(d) *Control device requirements for sources except small glycol dehydration units.* Owners and operators of small glycol dehydration units shall comply with the control requirements in paragraph (f) of this section.

(1) * * *

(i) An enclosed combustion device (*e.g.*, thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

* * * * *

(C) For a control device that can demonstrate a uniform combustion zone temperature during the performance test conducted under § 63.1282(d), operates at a minimum temperature of 760 °C.

* * * * *

(ii) A vapor recovery device (*e.g.*, carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare, as defined in § 63.1271, that is designed and operated in accordance with the requirements of § 63.11(b).

* * * * *

(4) * * *

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the emissions unit or units through the closed vent system to the control device as required under § 63.1275. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

* * * * *

(5) * * *

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system. Records identifying the schedule for replacement and records of each carbon replacement shall be maintained as required in § 63.1284(b)(7)(ix). The schedule for replacement shall be submitted with the Notification of Compliance Status Report as specified in § 63.1285(d)(4)(iv). Each carbon replacement must be reported in the Periodic Reports as specified in § 63.1285(e)(2)(xi).

* * * * *

(e) * * *

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, or BTEX limit determined in § 63.1275(b)(1)(iii), as applicable, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the emission reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent or, if applicable, the BTEX limit determined in § 63.1275(b)(1)(iii) for the small glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including but not limited to changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall emission reduction due to process modifications.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit

determined in § 63.1275(b)(1)(iii), as applicable, using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.1275(b)(1)(iii), as applicable, using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

* * * * *

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) or (f) of this section, as applicable, except that the emission reduction or limit achieved shall be the emission reduction or limit specified for the control device(s) in paragraph (e)(2) of this section.

(f) *Control device requirements for small glycol dehydration units.* (1) The control device used to meet BTEX the emission limit calculated in § 63.1275(b)(1)(iii) shall be one of the control devices specified in paragraphs (f)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (*e.g.*, thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated to reduce the mass content of BTEX in the gases vented to the device as determined in accordance with the requirements of § 63.1282(d). If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(ii) A vapor recovery device (*e.g.*, carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of BTEX in the gases vented to the device as determined in accordance with the requirements of § 63.1282(d); or

(iii) A flare, as defined in § 63.1271, that is designed and operated in accordance with the requirements of § 63.11(b).

(2) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of § 63.1283(d), the owner or operator shall demonstrate compliance according to the requirements of either § 63.1282(e) or (h).

(3) For each carbon adsorption system used as a control device to meet the requirements of paragraph (f)(1) of this section, the owner or operator shall manage the carbon as required under (d)(5)(i) and (ii) of this section.

29. Section 63.1282 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(1)(ii);

c. Revising paragraph (a)(2);

d. Adding paragraph (c);

e. Revising paragraph (d) introductory text;

f. Revising paragraphs (d)(1)(i) through (v);

g. Revising paragraph (d)(2);

h. Revising paragraph (d)(3) introductory text;

i. Revising paragraph (d)(3)(i)(B);

j. Revising paragraph (d)(3)(iv)(C)(*1*);

k. Adding paragraphs (d)(3)(v) and (vi);

l. Revising paragraph (d)(4) introductory text;

m. Revising paragraph (d)(4)(i);

n. Revising paragraph (d)(5);

o. Revising paragraph (e) introductory text;

p. Revising paragraphs (e)(2) and (e)(3);

q. Adding paragraphs (e)(4) through (e)(6);

r. Revising paragraph (f) introductory text;

s. Revising paragraph (f)(1);

t. Revising paragraph (f)(2) introductory text;

u. Revising paragraph (f)(2)(iii);

v. Revising paragraph (f)(3); and

w. Adding paragraphs (g) and (h) to read as follows:

§ 63.1282 Test methods, compliance procedures, and compliance demonstrations.

(a) *Determination of glycol dehydration unit flowrate, benzene emissions, or BTEX emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate, benzene emissions, or BTEX emissions.

(1) * * *

(ii) The owner or operator shall document, to the Administrator's satisfaction, the actual annual average natural gas flowrate to the glycol dehydration unit.

(2) The determination of actual average benzene or BTEX emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (a)(2)(i) or (a)(2)(ii) of this section. Emissions shall be determined either uncontrolled or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene or BTEX emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene or BTEX emissions in kilograms per hour through direct measurement by performing three runs of Method 18 in 40 CFR part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

* * * * *

(c) *Test procedures and compliance demonstrations for small glycol dehydration units.* This paragraph applies to the test procedures for small dehydration units.

(1) If the owner or operator is using a control device to comply with the emission limit in § 63.1275(b)(1)(iii), the requirements of paragraph (d) of this section apply. Compliance is demonstrated using the methods specified in paragraph (e) of this section.

(2) If no control device is used to comply with the emission limit in § 63.1275(b)(1)(iii), the owner or operator must determine the glycol dehydration unit BTEX emissions as specified in paragraphs (c)(2)(i) through (iii) of this section. Compliance is demonstrated if the BTEX emissions determined as specified in paragraphs (c)(2)(i) through (iii) are less than the emission limit calculated using the equation in § 63.1275(b)(1)(iii).

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the outlet of the glycol dehydration unit process vent. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) The BTEX emissions from the outlet of the glycol dehydration unit

process vent shall be determined using the procedures specified in paragraph (d)(3)(v) of this section. As an alternative, the mass rate of BTEX at the outlet of the glycol dehydration unit process vent may be calculated using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and shall be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1). When the BTEX mass rate is calculated for glycol dehydration units using the model GRI–GLYCalc™, all BTEX measured by Method 18, 40 CFR part 60, appendix A, shall be summed.

(d) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1) using a performance test as specified in paragraph (d)(3) of this section. Owners or operators using a condenser have the option to use a design analysis as specified in paragraph (d)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (d)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent. As an alternative to conducting a performance test under this section for combustion control devices, a control device that can be demonstrated to meet the performance requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1) through a performance test conducted by the manufacturer, as specified in paragraph (g) of this section, can be used.

(1) * * *

(i) Except as specified in paragraph (d)(2) of this section, a flare, as defined in § 63.1271, that is designed and operated in accordance with § 63.11(b);

(ii) Except for control devices used for small glycol dehydration units, a boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) Except for control devices used for small glycol dehydration units, a boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) Except for control devices used for small glycol dehydration units, a boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) Except for control devices used for small glycol dehydration units, a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

* * * * *

(2) An owner or operator shall design and operate each flare, as defined in § 63.1271, in accordance with the requirements specified in § 63.11(b) and the compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1) the owner or operator shall use the test methods and procedures specified in paragraphs (d)(3)(i) through (v) of this section. The initial and periodic performance tests shall be conducted according to the schedule specified in paragraph (d)(3)(vi) of this section.

(i) * * *

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), or the BTEX emission limit specified in § 63.1275(b)(1)(iii), the sampling site shall be located at the outlet of the combustion device.

* * * * *

(iv) * * *

(C) * * *

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3A or 3B, 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

* * * * *

(v) To determine compliance with the BTEX emission limit specified in § 63.1281(f)(1) the owner or operator shall use one of the following methods: Method 18, 40 CFR part 60, appendix A; ASTM D6420–99 (2004), as specified in § 63.772(a)(1)(ii); or any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A. The following procedures shall be used to calculate BTEX emissions:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of BTEX (E_o) shall be computed using the equations and procedures specified in paragraphs (d)(3)(v)(B)(*1*) and (*2*) of this section.

(*1*) The following equation shall be used:

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o$$

Where:

E_o = Mass rate of BTEX at the outlet of the control device, dry basis, kilogram per hour.

C_{oj} = Concentration of sample component j of the gas stream at the outlet of the control device, dry basis, parts per million by volume.

M_{oj} = Molecular weight of sample component j of the gas stream at the outlet of the control device, gram/gram-mole.

Q_o = Flowrate of gas stream at the outlet of the control device, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 degrees C.

n = Number of components in sample.

(*2*) When the BTEX mass rate is calculated, only BTEX compounds measured by Method 18, 40 CFR part 60, appendix A, or ASTM D6420–99 (2004) as specified in § 63.772(a)(1)(ii), shall be summed using the equations in paragraph (d)(3)(v)(B)(*1*) of this section.

(vi) The owner or operator shall conduct performance tests according to the schedule specified in paragraphs (d)(3)(vi)(A) and (B) of this section.

(A) An initial performance test shall be conducted within 180 days after the compliance date that is specified for each affected source in § 63.1270(d)(3) and (4) except that the initial performance test for existing combustion control devices at existing major sources shall be conducted no later than 3 years after the date of publication of the final rule in the **Federal Register**. If the owner or operator of an existing combustion

control device at an existing major source chooses to replace such device with a control device whose model is tested under § 63.1282(g), then the newly installed device shall comply with all provisions of this subpart no later than 3 years after the date of publication of the final rule in the **Federal Register**. The performance test results shall be submitted in the Notification of Compliance Status Report as required in § 63.1285(d)(1)(ii).

(B) Periodic performance tests shall be conducted for all control devices required to conduct initial performance tests except as specified in paragraphs (e)(3)(vi)(B)(*1*) and (*2*) of this section. The first periodic performance test shall be conducted no later than 60 months after the initial performance test required in paragraph (d)(3)(vi)(A) of this section. Subsequent periodic performance tests shall be conducted at intervals no longer than 60 months following the previous periodic performance test or whenever a source desires to establish a new operating limit. The periodic performance test results must be submitted in the next Periodic Report as specified in § 63.1285(e)(2)(x). Combustion control devices meeting the criteria in either paragraph (e)(3)(vi)(B)(*1*) or (*2*) of this section are not required to conduct periodic performance tests.

(*1*) A control device whose model is tested under, and meets the criteria of, § 63.1282(g), or

(*2*) A combustion control device tested under § 63.1282(d) that meets the outlet TOC or HAP performance level specified in § 63.1281(d)(1)(i)(B) and that establishes a correlation between firebox or combustion chamber temperature and the TOC or HAP performance level.

* * * * *

(4) For a condenser design analysis conducted to meet the requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1), the owner or operator shall meet the requirements specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.1285(d)(1)(i).

(i) The condenser design analysis shall include an analysis of the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the condenser design analysis, an owner or operator may elect to use the procedures specified in paragraph (d)(5) of this section.

* * * * *

(5) As an alternative to the procedures in paragraph (d)(4)(i) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions," (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(e) *Compliance demonstration for control devices performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), and (f)(1). Compliance shall be demonstrated using the requirements in paragraphs (e)(1) through (3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.1281(d)(1)(ii), (e)(3)(ii), or (f)(1) may demonstrate compliance according to paragraph (f) of this section. An owner or operator may switch between compliance with paragraph (e) of this section and compliance with paragraph (f) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.1285(e), following the change.

* * * * *

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.1283(d)(4) except that the inlet gas flowrate to the control device shall not be averaged.

(3) Compliance is achieved when the daily average of the monitoring parameter value calculated under paragraph (e)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (e)(1) of this section. For inlet gas flowrate, compliance with the operating parameter limit is achieved when the value is equal to or less than the value established under § 63.1282(g).

(4) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), the CMS required in § 63.1283(d) must be operated at all times the affected source is operating. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. Monitoring system repairs are required to be completed in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(5) Data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities may not be used in calculations used to report emissions or operating levels. All the data collected during all other required data collection periods must be used in assessing the operation of the control device and associated control system.

(6) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

(f) *Compliance demonstration with percent reduction or emission limit performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.1281(d)(1)(ii), (e)(3) or (f)(1) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to the procedures specified in § 63.1283(d)(5)(ii). For sources required to meet the BTEX limit in accordance with § 63.1281(e) or (f)(1) the owner or operator shall identify the minimum percent reduction necessary to meet the BTEX limit.

(2) Compliance with the percent reduction requirement in § 63.1281(d)(1)(ii), (e)(3), or (f)(1) shall be demonstrated by the procedures in paragraphs (f)(2)(i) through (iii) of this section.

* * * * *

(iii) Except as provided in paragraphs (f)(2)(iii)(A), (B), and (D) of this section, at the end of each operating day the owner or operator shall calculate the 30-day average HAP, or BTEX, emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (f)(2)(ii) of this section for the preceding 30 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.1281(e), the 30-day average HAP emission, or BTEX, emission reduction, shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency as determined in paragraph (f)(2)(ii) of this section, both for the preceding 30 operating days.

(A) After the compliance date specified in § 63.1270(d), an owner or operator of a facility that stores natural gas that has less than 30 days of data for determining the average HAP, or BTEX, emission reduction, as appropriate, shall calculate the cumulative average at the end of the withdrawal season, each season, until 30 days of condenser operating data are accumulated. For a facility that does not store natural gas, the owner or operator that has less than 30 days of data for determining average HAP, or BTEX, emission reduction, as appropriate, shall calculate the cumulative average at the end of the calendar year, each year, until 30 days of condenser operating data are accumulated.

(B) After the compliance date specified in § 63.1270(d), for an owner or operator that has less than 30 days of data for determining the average HAP, or BTEX, emission reduction, as appropriate, compliance is achieved if the average HAP, or BTEX, emission reduction, as appropriate, calculated in paragraph (f)(2)(iii)(A) of this section is equal to or greater than 95.0 percent.

* * * * *

(3) Compliance is achieved based on the applicable criteria in paragraphs (f)(3)(i) or (ii) of this section.

(i) For sources meeting the HAP emission reduction specified in § 63.1281(d)(1)(ii) or (e)(3) if the average HAP emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than 95.0 percent.

(ii) For sources required to meet the BTEX limit under § 63.1281(e)(3) or (f)(1), compliance is achieved if the average BTEX emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than the minimum percent reduction identified in paragraph (f)(1) of this section.

* * * * *

(g) *Performance testing for combustion control devices—manufacturers' performance test.* (1) This paragraph applies to the performance testing of a combustion control device conducted by the device manufacturer. The manufacturer shall demonstrate that a specific model of control device achieves the performance requirements in (g)(7) of this section by conducting a performance test as specified in paragraphs (g)(2) through (6) of this section.

(2) Performance testing shall consist of three one-hour (or longer) test runs for each of the four following firing rate settings making a total of 12 test runs per test. Propene (propylene) gas shall be used for the testing fuel. All fuel analyses shall be performed by an independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier).

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. Within the first 5 minutes, ramp the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. Within the first 5 minutes, ramp the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at 0 percent of the maximum design rate. Within the first 5 minutes, ramp the firing rate to 100 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 0 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(3) All models employing multiple enclosures shall be tested simultaneously and with all burners operational. Results shall be reported for the each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data shall be collected continuously throughout the performance test using an electronic Data Acquisition System and strip chart. Data shall be submitted with the test report in accordance with paragraph (g)(8)(iii) of this section.

(4) Inlet testing shall be conducted as specified in paragraphs (g)(4)(i) through (iii) of this section.

(i) The fuel flow metering system shall be located in accordance with Method 2A, 40 CFR part 60, appendix A–1, (or other approved procedure) to measure fuel flow rate at the control device inlet location. The fitting for filling fuel sample containers shall be located a minimum of 8 pipe diameters upstream of any inlet fuel flow monitoring meter.

(ii) Inlet flow rate shall be determined using Method 2A, 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the gas pressure and temperature at 5-minute intervals throughout each 60-minute THC test.

(iii) Inlet fuel sampling shall be conducted in accordance with the criteria in paragraphs (g)(4)(iii)(A) and (B) of this section.

(A) At the inlet fuel sampling location, securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 1 hour period. Filling shall be conducted as specified in the following:

(*1*) Open the canister sampling valve at the beginning of the total hydrocarbon (THC) test, and close the canister at the end of the THC test.

(*2*) Fill one canister for each THC test run.

(*3*) Label the canisters individually and record on a chain of custody form.

(B) Each fuel sample shall be analyzed using the following methods. The results shall be included in the test report.

(*1*) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03.

(*2*) Hydrogen (H_2), carbon monoxide (CO), carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2) using ASTM D1945–03.

(*3*) Carbonyl sulfide, carbon disulfide plus mercaptans using ASTM D5504.

(*4*) Higher heating value using ASTM D3588–98 or ASTM D4891–89.

(5) Outlet testing shall be conducted in accordance with the criteria in paragraphs (g)(5)(i) through (v) of this section.

(i) Sampling and flowrate measured in accordance with the following:

(A) The outlet sampling location shall be a minimum of 4 equivalent stack diameters downstream from the highest peak flame or any other flow disturbance, and a minimum of one equivalent stack diameter upstream of

the exit or any other flow disturbance. A minimum of two sample ports shall be used.

(B) Flow rate shall be measured using Method 1, 40 CFR part 60, Appendix 1, for determining flow measurement traverse point location; and Method 2, 40 CFR part 60, Appendix 1, shall be used to measure duct velocity. If low flow conditions are encountered (*i.e.*, velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer shall be used to obtain an accurate flow profile.

(ii) Molecular weight shall be determined as specified in paragraphs (g)(4)(iii)(B), and (g)(5)(ii)(A) and (B) of this section.

(A) An integrated bag sample shall be collected during the Method 4, 40 CFR part 60, Appendix A, moisture test. Analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the following criteria:

(*1*) Collect the integrated sample throughout the entire test, and collect representative volumes from each traverse location.

(*2*) The sampling line shall be purged with stack gas before opening the valve and beginning to fill the bag.

(*3*) The bag contents shall be kneaded or otherwise vigorously mixed prior to the GC analysis.

(*4*) The GC–TCD calibration procedure in Method 3C, 40 CFR part 60, Appendix A, shall be modified by using EPAAlt-045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, the initial calibration using at least three concentration levels shall be repeated.

(B) Report the molecular weight of: O_2, CO_2, methane (CH4), and N_2 and include in the test report submitted under § 63.775(d)(iii). Moisture shall be determined using Method 4, 40 CFR part 60, Appendix A. Traverse both ports with the Method 4, 40 CFR part 60, Appendix A, sampling train during each test run. Ambient air shall not be introduced into the Method 3C, 40 CFR part 60, Appendix A, integrated bag sample during the port change.

(iv) Carbon monoxide shall be determined using Method 10, 40 CFR part 60, Appendix A. The test shall be run at the same time and with the sample points used for the EPA Method 25A, 40 CFR part 60, Appendix A, testing. An instrument range of 0–10 per million by volume-dry (ppmvd) shall be used.

(v) Visible emissions shall be determined using Method 22, 40 CFR part 60, Appendix A. The test shall be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the position of the observer and annotated with date and time, will be taken once per test run and the four photos included in the test report.

(6) Total hydrocarbons (THC) shall be determined as specified by the following criteria:

(i) Conduct THC sampling using Method 25A, 40 CFR part 60, Appendix A, except the option for locating the probe in the center 10 percent of the stack shall not be allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during the testing.

(ii) A valid test shall consist of three Method 25A, 40 CFR part 60, Appendix A, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases will be propane in air and be certified through EPA Protocol 1—"EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, as amended August 25, 1999, EPA–600/R–97/121 (or more recent if updated since 1999).

(v) THC measurements shall be reported in terms of ppmvw as propane.

(vi) THC results shall be corrected to 3 percent CO_2, as measured by Method 3C, 40 CFR part 60, Appendix A.

(vii) Subtraction of methane/ethane from the THC data is not allowed in determining results.

(7) Performance test criteria:

(i) The control device model tested must meet the criteria in paragraphs (g)(7)(i)(A) through (C) of this section:

(A) Method 22, 40 CFR part 60, Appendix A, results under paragraph (g)(5)(v) of this section with no indication of visible emissions, and

(B) Average Method 25A, 40 CFR part 60, Appendix A, results under paragraph (g)(6) of this section equal to or less than 10.0 ppmvw THC as propane corrected to 3.0 percent CO_2, and

(C) Average CO emissions determined under paragraph (g)(5)(iv) of this section equal to or less than 10 parts ppmvd, corrected to 3.0 percent CO_2.

(ii) The manufacturer shall determine a maximum inlet gas flow rate which shall not be exceeded for each control device model to achieve the criteria in paragraph (g)(7)(i) of this section.

(iii) A control device meeting the criteria in paragraph (g)(7)(i)(A) through (C) of this section will have demonstrated a destruction efficiency of 98.0 percent for HAP regulated under this subpart.

(8) The owner or operator of a combustion control device model tested under this section shall submit the information listed in paragraphs (g)(8)(i) through (iii) in the test report required under § 63.775(d)(1)(iii).

(i) Full schematic of the control device and dimensions of the device components.

(ii) Design net heating value (minimum and maximum) of the device.

(iii) Test fuel gas flow range (in both mass and volume). Include the minimum and maximum allowable inlet gas flow rate.

(iv) Air/stream injection/assist ranges, if used.

(v) The test parameter ranges listed in paragraphs (g)(8)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold pressure.

(I) Pilot flame sensor.

(J) Pilot flame design fuel and fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flow rate.

(O) Wind velocity and direction.

(vi) The test report shall include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, and strip charts annotated with test times and calibration values.

(h) *Compliance demonstration for combustion control devices—manufacturers' performance test.* This paragraph applies to the demonstration of compliance for a combustion control device tested under the provisions in paragraph (g) of this section. Owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.1281(d)(1), (e)(3)(ii) or (f)(1), by installing a device tested under paragraph (g) of this section and complying with the following criteria:

(1) The inlet gas flow rate shall meet the range specified by the manufacturer. Flow rate shall be measured as specified in § 63.1283(d)(3)(i)(H)(*1*).

(2) A pilot flame shall be present at all times of operation. The pilot flame shall be monitored in accordance with § 63.1283(d)(3)(i)(H)(*2*).

(3) Devices shall be operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. A visible emissions test using Method 22, 40 CFR part 60, Appendix A, shall be performed monthly. The observation period shall be 2 hours and shall be used according to Method 22.

(4) Compliance with the operating parameter limit is achieved when the following criteria are met:

(i) The inlet gas flow rate monitored under paragraph (h)(1) of this section is equal to or below the maximum established by the manufacturer; and

(ii) The pilot flame is present at all times; and

(iii) During the visible emissions test performed under paragraph (h)(3) of this section the duration of visible emissions does not exceed a total of 5 minutes during the observation period. Devices failing the visible emissions test shall follow the requirements in paragraphs (h)(4)(iii)(A) and (B) of this section.

(A) Following the first failure, the fuel nozzle(s) and burner tubes shall be replaced.

(B) If, following replacement of the fuel nozzle(s) and burner tubes as specified in paragraph (h)(4)(iii)(A), the visible emissions test is not passed in the next scheduled test, either a performance test shall be performed under paragraph (d) of this section, or the device shall be replaced with another control device whose model was tested, and meets, the requirements in paragraph (g) of this section.

30. Section 63.1283 is amended by:

a. Adding paragraph (b);

b. Revising paragraph (d)(1) introductory text;

c. Revising paragraph (d)(1)(ii) and adding paragraphs (d)(1)(iii) and (iv);

d. Revising paragraph (d)(2)(i) and (d)(2)(ii);

e. Revising paragraphs (d)(3)(i)(A) and (B);

f. Revising paragraphs (d)(3)(i)(D) and (E);

g. Revising paragraphs (d)(3)(i)(F)(*1*) and (*2*);

h. Revising paragraph (d)(3)(i)(G);

i. Adding paragraph (d)(3)(i)(H);

j. Revising paragraph (d)(4);

k. Revising paragraph (d)(5)(i);

l. Revising paragraphs (d)(5)(ii)(A) through (C);

m. Revising paragraph (d)(6) introductory text;

n. Revising paragraph (d)(6)(ii);

o. Adding paragraph (d)(6)(v);

p. Revising paragraph (d)(8)(i)(A); and

q. Revising paragraph (d)(8)(ii) to read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(b) The owner or operator of a control device whose model was tested under 63.1282(g) shall develop an inspection and maintenance plan for each control device. At a minimum, the plan shall contain the control device manufacturer's recommendations for ensuring proper operation of the device. Semi-annual inspections shall be conducted for each control device with maintenance and replacement of control device components made in accordance with the plan.

* * * * *

(d) *Control device monitoring requirements.* (1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section. Owners or operators that install and operate a flare in accordance with § 63.1281(d)(1)(iii) or (f)(1)(iii) are exempt from the requirements of paragraphs (d)(4) and (5) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.1281(d), (e)(3), or (f)(1). Each continuous parameter monitoring system shall meet the following specifications and requirements:

* * * * *

(ii) A site-specific monitoring plan must be prepared that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraph (d) of this section and in § 63.8(d). Each CPMS must be installed, calibrated, operated, and maintained in accordance with the procedures in your approved site-specific monitoring plan. Using the process described in § 63.8(f)(4), you may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (d)(1)(ii)(A) through (E) of this section in your site-specific monitoring plan.

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations;

(B) Sampling interface (*e.g.*, thermocouple) location such that the monitoring system will provide representative measurements;

(C) Equipment performance checks, system accuracy audits, or other audit procedures;

(D) Ongoing operation and maintenance procedures in accordance with provisions in § 63.8(c)(1) and (c)(3); and

(E) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 63.10(c), (e)(1), and (e)(2)(i).

(iii) The owner or operator must conduct the CPMS equipment performance checks, system accuracy audits, or other audit procedures specified in the site-specific monitoring plan at least once every 12 months.

(iv) The owner or operator must conduct a performance evaluation of each CPMS in accordance with the site-specific monitoring plan.

(2) * * *

(i) Except for control devices for small glycol dehydration units, a boiler or process heater in which all vent streams are introduced with the primary fuel or are used as the primary fuel;

(ii) Except for control devices for small glycol dehydration units, a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) * * *

(i) * * *

(A) For a thermal vapor incinerator that demonstrates during the performance test conducted under § 63.1282(d) that combustion zone temperature is an accurate indicator of performance, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperatures at two locations and have a minimum accuracy of ± 1 percent of the temperatures being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the

nearest feasible point to the catalyst bed outlet.

* * * * *

(D) For a boiler or process heater, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.8 degrees C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) * * *

(*1*) A continuous parameter monitoring system to measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The flow sensor must have a measurement sensitivity of 5 percent of the flow rate or 10 cubic feet per minute, whichever is greater. The mechanical connections for leakage must be checked at least every month, and a visual inspection must be performed at least every 3 months of all components of the flow CPMS for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your flow CPMS is not equipped with a redundant flow sensor; and

(*2*) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device shall have a minimum accuracy of ± 1 percent of the temperature being monitored in degrees C, or ± 2.5 degrees C, whichever value is greater.

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.1282(d)(3) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(H) For a control device whose model is tested under § 63.1282(g):

(*1*) A continuous monitoring system that measures gas flow rate at the inlet to the control device. The monitoring instrument shall have an accuracy of plus or minus 2 percent or better.

(*2*) A heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

* * * * *

(4) Using the data recorded by the monitoring system, except for inlet gas flowrate, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) * * *

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by a condenser design analysis or control device manufacturer's recommendations or a combination of both.

(B) If the owner or operator uses a condenser design analysis in accordance with the requirements of § 63.1282(d)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the condenser design analysis and may be supplemented by the condenser manufacturer's recommendations.

(C) If the owner or operator operates a control device where the performance test requirement was met under § 63.1282(g) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii) or (f)(1), then the maximum inlet gas flow rate shall be established based on the performance test and supplemented, as necessary, by the manufacturer recommendations.

(ii) * * *

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.1282(d)(4)(i) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraph (d)(5)(ii)(B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day, and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

* * * * *

(ii) For sources meeting § 63.1281(d)(1)(ii), an excursion occurs when average condenser efficiency

calculated according to the requirements specified in § 63.1282(f)(2)(iii) is less than 95.0 percent, as specified in § 63.1282(f)(3). For sources meeting § 63.1281(f)(1), an excursion occurs when the 30-day average condenser efficiency calculated according to the requirements of § 63.1282(f)(2)(iii) is less than the identified 30-day required percent reduction.

* * * * *

(v) For control device whose model is tested under § 63.1282(g) an excursion occurs when:

(A) The inlet gas flow rate exceeds the maximum established during the test conducted under § 63.1282(g).

(B) Failure of the monthly visible emissions test conducted under § 63.1282(h)(3) occurs.

(8) * * *

(i) * * *

(A) During a malfunction when the affected facility is operated during such period in accordance with § 63.6(e)(1); or

* * * * *

(ii) For each control device, or combinations of control devices, installed on the same emissions unit, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first Periodic Report submitted by the owner or operator in accordance with § 63.1285(e) of this subpart.

* * * * *

31. Section 63.1284 is amended by:

a. Revising paragraph (b)(3) introductory text;

b. Removing and reserving paragraph (b)(3)(ii);

c. Revising paragraph (b)(4)(ii);

d. Adding paragraph (b)(7)(ix); and

e. Adding paragraph (f), (g) and (h) to read as follows:

§ 63.1284 Recordkeeping requirements.

* * * * *

(b) * * *

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d). Notwithstanding the previous sentence, monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating or failed to collect required data.

* * * * *

(ii) [Reserved]

* * * * *

(4) * * *

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1283(d)(4) of this subpart, except as specified in paragraphs (b)(4)(ii)(A) through (C) of this section.

(A) For flares, the records required in paragraph (e) of this section.

(B) For condensers installed to comply with § 63.1275, records of the annual 30-day rolling average condenser efficiency determined under § 63.1282(f) shall be kept in addition to the daily averages.

(C) For a control device whose model is tested under § 63.1282(g), the records required in paragraph (g) of this section.

* * * * * *

(7) * * *

(ix) Records identifying the carbon replacement schedule under § 63.1281(d)(5) and records of each carbon replacement.

* * * * *

(f) The owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.*, process equipment) or the air pollution control equipment and monitoring equipment. The owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1274(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(g) Record the following when using a control device whose model is tested under § 63.1282(g) to comply with § 63.1281(d), (e)(3)(ii) and (f)(1):

(1) All visible emission readings and flowrate measurements made during the compliance determination required by § 63.1282(h); and

(2) All hourly records and other recorded periods when the pilot flame is absent.

(h) The date the semi-annual maintenance inspection required under § 63.1283(b) is performed. Include a list of any modifications or repairs made to the control device during the inspection and other maintenance performed such as cleaning of the fuel nozzles.

32. Section 63.1285 is amended by:

a. Revising paragraph (b)(1);

b. Revising paragraph (b)(6);

c. Removing paragraph (b)(7);

d. Revising paragraph (d)(1) introductory text;

e. Revising paragraph (d)(1)(i);

f. Revising paragraph (d)(1)(ii) introductory text;

g. Revising paragraph (d)(2) introductory text;

h. Revising paragraph (d)(4)(ii);

i. Adding paragraph (d)(4)(iv);

j. Revising paragraph (d)(10);

k. Adding paragraphs (d)(11) and (d)(12);

l. Revising paragraph (e)(2) introductory text;

m. Revising paragraph (e)(2)(ii)(B);

n. Adding paragraphs (e)(2)(ii)(D) and (E);

o. Adding paragraphs (e)(2)(x), (xi) and (xii); and

p. Adding paragraph (g) to read as follows:

§ 63.1285 Reporting requirements.

* * * * *

(b) * * *

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted as provided in paragraphs (b)(1)(i) and (ii) of this section.

(i) Except as otherwise provided in paragraph (b)(1)(ii) of this section, the initial notification shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(ii) An affected source identified under § 63.1270(d)(3) shall submit an initial notification required for existing affected sources under § 63.9(b)(2) within 1 year after the affected source becomes subject to the provisions of this subpart or by one year after publication of the final rule in the **Federal Register**, whichever is later. An affected source identified under § 63.1270(d)(3) that plans to be an area source by three years after publication of the final rule in the **Federal Register**, shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

* * * * *

(6) If there was a malfunction during the reporting period, the Periodic Report specified in paragraph (e) of this section shall include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of

actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1274(h), including actions taken to correct a malfunction.

* * * * *

(d) * * *

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.1274, the owner or operator shall submit the information in paragraph (d)(1)(iii) of this section and the information in either paragraph (d)(1)(i) or (ii) of this section.

(i) The condenser design analysis documentation specified in § 63.1282(d)(4) of this subpart if the owner or operator elects to prepare a design analysis; or

(ii) If the owner or operator is required to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.1282(d)(3), and that the test conditions are representative of current operating conditions. If the owner or operator operates a combustion control device model tested under § 63.1282(g), an electronic copy of the performance test results shall be submitted via e-mail to *Oil_and_Gas_PT@EPA.GOV*.

* * * * *

(2) If a closed-vent system and a flare are used to comply with § 63.1274, the owner or operator shall submit performance test results including the information in paragraphs (d)(2)(i) and (ii) of this section. The owner or operator shall also submit the information in paragraph (d)(2)(iii) of this section.

* * * * *

(4) * * *

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.1283(d)(5) of this subpart. This explanation shall include any data and calculations used to develop the value, and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1).

* * * * *

(iv) For each carbon adsorber, the predetermined carbon replacement schedule as required in § 63.1281(d)(5)(i).

* * * * *

(10) The owner or operator shall submit the analysis prepared under § 63.1281(e)(2) to demonstrate that the conditions by which the facility will be operated to achieve the HAP emission reduction of 95.0 percent, or the BTEX limit in § 63.1275(b)(1)(iii) through process modifications or a combination of process modifications and one or more control devices.

(11) If the owner or operator installs a combustion control device model tested under the procedures in § 63.1282(g), the data listed under § 63.1282(g)(8).

(12) For each combustion control device model tested under § 63.1282(g), the information listed in paragraphs (d)(12)(i) through (vi) of this section.

(i) Name, address and telephone number of the control device manufacturer.

(ii) Control device model number.

(iii) Control device serial number.

(iv) Date of control device certification test.

(v) Manufacturer's HAP destruction efficiency rating.

(vi) Control device operating parameters, maximum allowable inlet gas flowrate.

* * * * *

(e) * * *

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (xii) of this section, as applicable.

* * * * *

(ii) * * *

(B) For each excursion caused when the 30-day average condenser control efficiency is less than the value, as specified in § 63.1283(d)(6)(ii), the report must include the 30-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

* * * * *

(D) For each excursion caused when the maximum inlet gas flow rate identified under § 63.1282(g) is exceeded, the report must include the values of the inlet gas identified and the date and duration of the period that the excursion occurred.

(E) For each excursion caused when visible emissions determined under § 63.1282(h) exceed the maximum allowable duration, the report must include the date and duration of the period that the excursion occurred.

* * * * *

(x) The results of any periodic test as required in § 63.1282(d)(3) conducted during the reporting period.

(xi) For each carbon adsorber used to meet the control device requirements of § 63.1281(d)(1), records of each carbon replacement that occurred during the reporting period.

(xii) For combustion control device inspections conducted in accordance with § 63.1283(b) the records specified in § 63.1284(h).

* * * * *

(g) *Electronic reporting.* (1) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html/*). Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into the EPA's WebFIRE database.

(2) All reports required by this subpart not subject to the requirements in paragraphs (g)(1) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (g)(1) of this section in paper format.

33. Section 63.1287 is amended by revising paragraph (a) to read as follows:

§ 63.1287 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.1274 through 63.1281, the Administrator will publish a notice in the **Federal Register** permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

* * * * *

34. Appendix to Subpart HHH of Part 63—Table is amended by revising Table 2 to read as follows:

Appendix to Subpart HHH of Part 63—Tables

* * * * *

TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
§63.1(a)(1)	Yes.	
§63.1(a)(2)	Yes.	
§63.1(a)(3)	Yes.	
§63.1(a)(4)	Yes.	
§63.1(a)(5)	No	Section reserved.
§63.1(a)(6) through (a)(8)	Yes.	
§63.1(a)(9)	No	Section reserved.
§63.1(a)(10)	Yes.	
§63.1(a)(11)	Yes.	
§63.1(a)(12) through (a)(14)	Yes.	
§63.1(b)(1)	No	Subpart HHH specifies applicability.
§63.1(b)(2)	Yes.	
§63.1(b)(3)	No.	
§63.1(c)(1)	No	Subpart HHH specifies applicability.
§63.1(c)(2)	No.	
§63.1(c)(3)	No	Section reserved.
§63.1(c)(4)	Yes.	
§63.1(c)(5)	Yes.	
§63.1(d)	No	Section reserved.
§63.1(e)	Yes.	
§63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HHH.
§63.3(a) through (c)	Yes.	
§63.4(a)(1) through (a)(3)	Yes.	
§63.4(a)(4)	No	Section reserved.
§63.4(a)(5)	Yes.	
§63.4(b)	Yes.	
§63.4(c)	Yes.	
§63.5(a)(1)	Yes.	
§63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§63.5(b)(1)	Yes.	
§63.5(b)(2)	No	Section reserved.
§63.5(b)(3)	Yes.	
§63.5(b)(4)	Yes.	
§63.5(b)(5)	Yes.	
§63.5(b)(6)	Yes.	
§63.5(c)	No	Section reserved.
§63.5(d)(1)	Yes.	
§63.5(d)(2)	Yes.	
§63.5(d)(3)	Yes.	
§63.5(d)(4)	Yes.	
§63.5(e)	Yes.	
§63.5(f)(1)	Yes.	
§63.5(f)(2)	Yes.	
§63.6(a)	Yes.	
§63.6(b)(1)	Yes.	
§63.6(b)(2)	Yes.	
§63.6(b)(3)	Yes.	
§63.6(b)(4)	Yes.	
§63.6(b)(5)	Yes.	
§63.6(b)(6)	No	Section reserved.
§63.6(b)(7)	Yes.	
§63.6(c)(1)	Yes.	
§63.6(c)(2)	Yes.	
§63.6(c)(3) and (c)(4)	No	Section reserved.
§63.6(c)(5)	Yes.	
§63.6(d)	No	Section reserved.
§63.6(e)	Yes.	
§63.6(e)	Yes	Except as otherwise specified.
§63.6(e)(1)(i)	No	See §63.1274(h) for general duty requirement.
§63.6(e)(1)(ii)	No.	
§63.6(e)(1)(iii)	Yes.	
§63.6(e)(2)	Yes.	
§63.6(e)(3)	No.	
§63.6(f)(1)	No.	
§63.6(f)(2)	Yes.	
§63.6(f)(3)	Yes.	
§63.6(g)	Yes.	
§63.6(h)	No	Subpart HHH does not contain opacity or visible emission standards.
§63.6(i)(1) through (i)(14)	Yes.	

TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	No.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	Yes.	
§ 63.8(c)(1)(iii)	Pending.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5) through (c)(8)	Yes.	
§ 63.8(d)	Yes.	
§ 63.8(d)(3)	Yes	Except for last sentence, which refers to an SSM plan. SSM plans are not required.
§ 63.8(e)	Yes	Subpart HHH does not specifically require continuous emissions monitor performance evaluations, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes.	
§ 63.8(f)(6)	No	Subpart HHH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HHH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes.	
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	No.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1) through (h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) and (h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes	Section 63.1284(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data.
§ 63.10(b)(2)	Yes.	
§ 63.10(b)(2)(i)	No.	
§ 63.10(b)(2)(ii)	No	See § 63.1284(f) for recordkeeping of occurrence, duration, and actions taken during malfunction.
§ 63.10(b)(2)(iii)	Yes.	
§ 63.10(b)(2)(iv) through (b)(2)(v)	No.	
§ 63.10(b)(2)(vi) through (b)(2)(xiv)	Yes.	
§ 63.10(b)(3)	No.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.

TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.10(c)(10) and (c)(11)	No	See § 63.1284(f)for recordkeeping of malfunctions
§ 63.10(c)(12) through (c)(14)	Yes.	
§ 63.10(c)(15)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes.	
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No	See § 63.1285(b)(6) for reporting of malfunctions.
§ 63.10(e)(1)	Yes.	
§ 63.10(e)(2)	Yes.	
§ 63.10(e)(3)(i)	Yes	Subpart HHH requires major sources to submit Periodic Reports semi-annually.
§ 63.10(e)(3)(i)(A)	Yes.	
§ 63.10(e)(3)(i)(B)	Yes.	
§ 63.10(e)(3)(i)(C)	No	Subpart HHH does not require quarterly reporting for excess emissions.
§ 63.10(e)(3)(ii) through (e)(3)(viii)	Yes.	
§ 63.10(f)	Yes.	
§ 63.11(a) and (b)	Yes.	
§ 63.11(c), (d), and (e)	Yes.	
§ 63.12(a) through (c)	Yes.	
§ 63.13(a) through (c)	Yes.	
§ 63.14(a) and (b)	Yes.	
§ 63.15(a) and (b)	Yes.	

[FR Doc. 2011–19899 Filed 8–22–11; 8:45 am]

BILLING CODE 6560–50–P

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No. 163 August 23, 2011

Part III

The President

Executive Order 13583—Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce

Federal Register
Vol. 76, No. 163
Tuesday, August 23, 2011

Presidential Documents

Title 3—

The President

Executive Order 13583 of August 18, 2011

Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the Federal workplace as a model of equal opportunity, diversity, and inclusion, it is hereby ordered as follows:

Section 1. *Policy.* Our Nation derives strength from the diversity of its population and from its commitment to equal opportunity for all. We are at our best when we draw on the talents of all parts of our society, and our greatest accomplishments are achieved when diverse perspectives are brought to bear to overcome our greatest challenges.

A commitment to equal opportunity, diversity, and inclusion is critical for the Federal Government as an employer. By law, the Federal Government's recruitment policies should "endeavor to achieve a work force from all segments of society." (5 U.S.C. 2301(b)(1)). As the Nation's largest employer, the Federal Government has a special obligation to lead by example. Attaining a diverse, qualified workforce is one of the cornerstones of the merit-based civil service.

Prior Executive Orders, including but not limited to those listed below, have taken a number of steps to address the leadership role and obligations of the Federal Government as an employer. For example, Executive Order 13171 of October 12, 2000 (Hispanic Employment in the Federal Government), directed executive departments and agencies to implement programs for recruitment and career development of Hispanic employees and established a mechanism for identifying best practices in doing so. Executive Order 13518 of November 9, 2009 (Employment of Veterans in the Federal Government), required the establishment of a Veterans Employment Initiative. Executive Order 13548 of July 26, 2010 (Increasing Federal Employment of Individuals with Disabilities), and its related predecessors, Executive Order 13163 of July 26, 2000 (Increasing the Opportunity for Individuals With Disabilities to be Employed in the Federal Government), and Executive Order 13078 of March 13, 1998 (Increasing Employment of Adults With Disabilities), sought to tap the skills of the millions of Americans living with disabilities.

To realize more fully the goal of using the talents of all segments of society, the Federal Government must continue to challenge itself to enhance its ability to recruit, hire, promote, and retain a more diverse workforce. Further, the Federal Government must create a culture that encourages collaboration, flexibility, and fairness to enable individuals to participate to their full potential.

Wherever possible, the Federal Government must also seek to consolidate compliance efforts established through related or overlapping statutory mandates, directions from Executive Orders, and regulatory requirements. By this order, I am directing executive departments and agencies (agencies) to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of their human resources strategies. This approach should include a continuing effort to identify and adopt best practices, implemented in an integrated manner, to promote diversity and remove barriers to equal employment opportunity, consistent with merit system principles and applicable law.

Sec. 2. *Government-Wide Diversity and Inclusion Initiative and Strategic Plan.* The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of Management and Budget (OMB), in coordination with the President's Management Council (PMC) and the Chair of the Equal Employment Opportunity Commission (EEOC), shall:

(a) establish a coordinated Government-wide initiative to promote diversity and inclusion in the Federal workforce;

(b) within 90 days of the date of this order:

(i) develop and issue a Government-wide Diversity and Inclusion Strategic Plan (Government-wide Plan), to be updated as appropriate and at a minimum every 4 years, focusing on workforce diversity, workplace inclusion, and agency accountability and leadership. The Government-wide Plan shall highlight comprehensive strategies for agencies to identify and remove barriers to equal employment opportunity that may exist in the Federal Government's recruitment, hiring, promotion, retention, professional development, and training policies and practices;

(ii) review applicable directives to agencies related to the development or submission of agency human capital and other workforce plans and reports in connection with recruitment, hiring, promotion, retention, professional development, and training policies and practices, and develop a strategy for consolidating such agency plans and reports where appropriate and permitted by law; and

(iii) provide guidance to agencies concerning formulation of agency-specific Diversity and Inclusion Strategic Plans prepared pursuant to section 3(b) of this order;

(c) identify appropriate practices to improve the effectiveness of each agency's efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce, consistent with merit system principles and applicable law; and

(d) establish a system for reporting regularly on agencies' progress in implementing their agency-specific Diversity and Inclusion Strategic Plans and in meeting the objectives of this order.

Sec. 3. *Responsibilities of Executive Departments and Agencies.* All agencies shall implement the Government-wide Plan prepared pursuant to section 2 of this order, and such other related guidance as issued from time to time by the Director of OPM and Deputy Director for Management of OMB. In addition, the head of each executive department and agency referred to under subsections (1) and (2) of section 901(b) of title 31, United States Code, shall:

(a) designate the agency's Chief Human Capital Officer to be responsible for enhancing employment and promotion opportunities within the agency, in collaboration with the agency's Director of Equal Employment Opportunity and Director of Diversity and Inclusion, if any, and consistent with law and merit system principles, including development and implementation of the agency-specific Diversity and Inclusion Strategic Plan;

(b) within 120 days of the issuance of the Government-wide Plan or its update under section 2(b)(i) of this order, develop and submit for review to the Director of OPM and the Deputy Director for Management of OMB an agency-specific Diversity and Inclusion Strategic Plan for recruiting, hiring, training, developing, advancing, promoting, and retaining a diverse workforce consistent with applicable law, the Government-wide Plan, merit system principles, the agency's overall strategic plan, its human capital plan prepared pursuant to Part 250 of title 5 of the Code of Federal Regulations, and other applicable workforce planning strategies and initiatives;

(c) implement the agency-specific Diversity and Inclusion Strategic Plan after incorporating it into the agency's human capital plan; and

(d) provide information as specified in the reporting requirements developed under section 2(d).

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted to a department or agency or the head thereof, including the authority granted to EEOC by other Executive Orders (including Executive Order 12067) or any agency's authority to establish an independent Diversity and Inclusion Office; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
August 18, 2011.

[FR Doc. 2011–21704
Filed 8–22–11; 11:15 am]
Billing code 3195–W1–P

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H.R. 2553/P.L. 112–27
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H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

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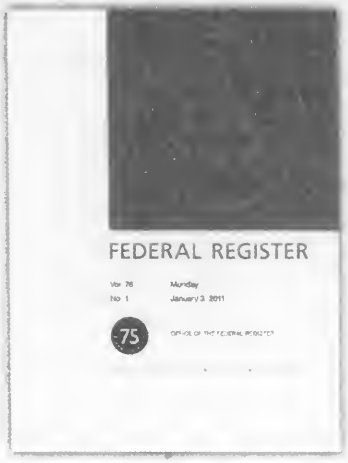

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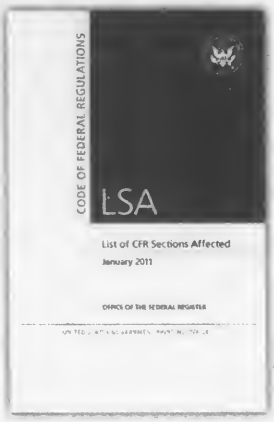

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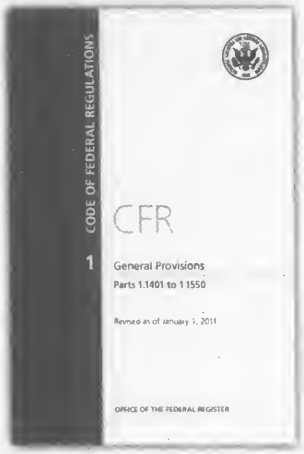

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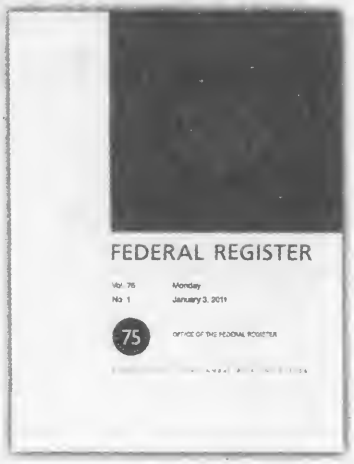

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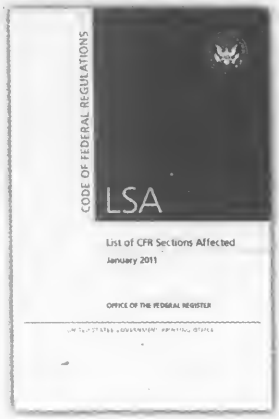

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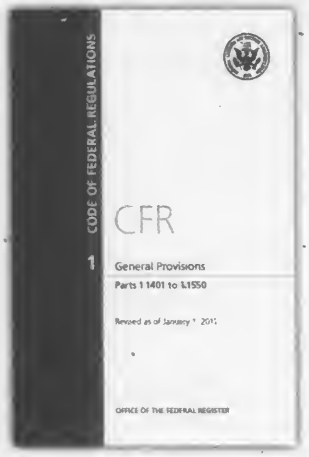

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